

BEFORE THE STATE TAX APPEAL BOARD
OF THE STATE OF MONTANA

ROBERT O. THOMPSON,)	
)	DOCKET NO.: PT-2012-19
Appellant,)	
)	
-vs-)	FACTUAL BACKGROUND,
)	CONCLUSIONS OF LAW,
)	ORDER and OPPORTUNITY
DEPARTMENT OF REVENUE)	FOR JUDICIAL REVIEW
OF THE STATE OF MONTANA,)	
)	
Respondent.)	

Robert O. Thompson (Taxpayer) appealed a decision of the Flathead County Tax Appeal Board (CTAB) relating to the Department of Revenue's (DOR's) valuation of his 5.4 acre tract of land identified as Lot 41, Block 1 of the 033120 Tri Lake Addition to the City of Columbia Falls, Flathead County, Montana. Taxpayer claims the DOR overvalued his property for tax purposes and seeks a reduction in the value assigned by the DOR. A telephonic hearing was held by the State Tax Appeal Board (Board) on February 5, 2013 at which Taxpayer represented himself. The DOR was represented by Tax Counsel Michele Crepeau, Regional Manager Scott Williams and Appraiser Dan Lapan.

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 determined an appropriate market value for the subject property for tax year 2012.

Summary

Robert O. Thompson is the Taxpayer in this action and therefore bears the burden of proof. (*Department of Revenue v. Burlington Northern, Inc.*, 169 Mont. 202, 545 P.2d 1083 (1976).) Based on a preponderance of the evidence, the Board affirms the findings of the Flathead County Tax Appeal Board.

Evidence Presented

1. Due, proper and sufficient notice was given of this matter. This matter was set to be heard telephonically without opposition from the parties. All parties were afforded opportunity to submit additional evidence.
2. The property at issue is a 5.4 acre vacant residential lot at 971 Bailey Drive, Columbia Falls, described as Lot 41, Block 1 of the 033120 Tri Lake Addition to the City of Columbia Falls, Flathead County, Montana. (Appeal Form.)
3. The Taxpayer filed an AB-26 form for property review on September 14, 2009. As a result of that review, the 2009 original value of \$194,800 was reduced to \$147,000, an approximate 25 percent reduction. (DOR Exh. A.)
4. The Taxpayer is asking for a land value of \$70,000. (Appeal Form.)
5. The Taxpayer filed an appeal with the Flathead County Tax Appeal Board (CTAB) on November 18, 2011, stating: "Previous appraisal by DOR in 2002 was \$23,000. In 2010, it jumped to \$200,000 and is now at \$140,000 which is still too high. I am retired and disabled. The property was purchased in 1970. There have been no improvements made. This is a lot left natural – no utilities. I am willing to transfer title to the state for \$70,000 because I cannot get that amount from anyone else." (Appeal Form).

6. A hearing before the Flathead CTAB was held on November 15, 2012. The CTAB made no adjustment to the land value. (Appeal Form.)
7. The Taxpayer appealed to this Board on November 20, 2012. The reason for appealing was stated as: "The taxes are way too high. I gave several valid reasons. And I don't think the board heard a word of it. Their minds were made up before I even presented my case. They say the value is \$140,000. I say it is \$70,000." (Appeal Form.)
8. This Board held a telephonic hearing on February 5, 2013.
9. The Taxpayer made claims that he could not sell the property in today's market for the value set in 2009. During the hearing Taxpayer presented no documentary evidence but stated that he had recently consulted with a realtor who would only buy the property for \$60-70,000, less commission. Further, no documentary evidence was submitted to the CTAB in support of his contentions. The Department of Revenue presented evidence during the hearing of five other comparable properties which did sell and were reasonably comparable in size and location to the subject property. The DOR appraiser Dan Lapan testified that these comparable properties demonstrated that the valuation of the property was correct.
10. The DOR provided a CALP (Computer Assisted Land Pricing model), which was used to value the subject property, and was supported by the Land Sales Comparison, a map of comparables, and pictures of subject and sales comparables. (DOR Exhs. B, E, F and G.)

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. All residential appraisers must receive specific training and testing to certify that they possess the required knowledge, skills, and abilities to perform residential property appraisals as outlined in this rule. (ARM 42.18.206(1).)
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. 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).)
7. The actual selling price of comparable sales must be adjusted to a value consistent with the base year. (ARM 42.20.454(1)(h).)
8. 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.)

Findings of Fact, Conclusions of Law and Board Discussion

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 2012.

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. *Department of Revenue v. Burlington Northern, Inc.*, 169 Mont. 202, 545 P.2d 1083 (1976); *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 Taxpayer claims that his property is worth only \$70,000 and his evidence for this consists of conversations with real estate agents and his knowledge of similar lots now on the market for less than the appraised value. However, Taxpayer has provided no documentary evidence that other similar properties were sold, prior to the valuation date, for less than the subject property is valued at. The Taxpayer has brought no evidence to challenge the comparable sales used by the DOR as a market comparison to his property. There is no evidence that those comparable properties in the CALP are incorrect. Thus we assume that those comparables which were used to set the value of the subject property properly value the subject property.

Further, this Board will review the value of the property as of 2008. Its current valuation is therefore not relevant. The DOR is required by Montana statutes to value all properties for the current appraisal cycle beginning on January 1, 2009 at their fair market values on July 1, 2008. The use of a single date for valuation assures that all taxpayers are treated equally and are all subject to the same appraisal techniques and economic trends. Mr. Thompson's property values may have fallen since the appraisal but that is not grounds for correcting the appraisal mid-cycle. Thus, evidence of the current market values in 2012 is not relevant to the issue.

While the Board is sympathetic to the Taxpayer's belief that he could not sell the property at the value presently assessed, it is responsibility of the Board

to review the assessment for errors, which we have done, and the Board has not found any errors on the part of the DOR.

This Board finds the evidence presented by the DOR adequately supports the values assessed. Therefore, this Board finds that the adjusted assessment of \$147,000 for the subject property is valid under the present Montana system for property valuation.

Summary


Therefore, the Board affirms the CTAB decision.

Order

IT IS THEREFORE ORDERED by the State Tax Appeal Board of the State of Montana that the subject land value shall be entered on the tax rolls of Flathead County at a 2012 tax year value of \$147,000, as determined by the Department of Revenue and affirmed by the Flathead County Tax Appeal Board.

Dated this 13th of March, 2013.

BY ORDER OF THE
STATE TAX APPEAL BOARD


KAREN E. POWELL, Chairwoman

(SEAL)


SAMANTHA SANCHEZ, Member


DAVID L. McALPIN, 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 14th 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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