

BEFORE THE STATE TAX APPEAL BOARD
OF THE STATE OF MONTANA

WAKE UP, INC.,

Appellant,

-vs-

THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA,

Respondent.

)
) DOCKET NOS.: PT-2012-11
) through PT-2012-15

) FINDINGS OF FACT,
) CONCLUSIONS OF LAW,
) ORDER and OPPORTUNITY
) FOR JUDICIAL REVIEW

Wake UP, Inc., (Taxpayer) appealed decisions of the Gallatin County Tax Appeal Board (CTAB) relating to the Department of Revenue's (DOR) valuation of five tracts of land in Gallatin County. The Taxpayer argues the DOR overvalued the property for tax purposes, and seeks a reduction in value assigned by the DOR. At the State Tax Appeal Board (Board) hearing held on December 11, 2012, the Taxpayer was represented by Christine Huyser, president, providing testimony and evidence in support of the appeal. The DOR, represented by Anthony Zammit, Tax Counsel, Commercial Appraiser Carol Rowe and Lead Appraiser John Elliott, presented testimony and evidence in opposition to the appeal.

Issue Presented

The issue before this Board is whether the Department of Revenue erred in valuing the subject properties for tax purposes for tax year 2012.

Summary

Wake UP, Inc. is the Taxpayer in this proceeding and, therefore, has the burden of proof. Based on a preponderance of the evidence, the Board upholds the decisions 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 evidence, verbal and documentary.
2. The subject properties are five tracts of land, three with improvements, in Gallatin County, described as follows:

PT-2012-11: Tract 1 consisting of 0.51 acres in Section 31, Township 1 South, Range 6 East, Geocode 06-0905-31-4-01-60-0000.

PT-2012-12: Tract 4 consisting of 13.77 acres, and improvements, in Section 6, Township 2 South, Range 6 East, Geocode 06-0799-06-1-01-50-0000.

PT-2012-13: Tract 5 consisting of 0.31 acres in Section 6, Township 2 South, Range 6 East, Geocode 06-0799-06-1-01-65-0000.

PT-2012-14: Tract 3 consisting of 0.85 acres, and improvements, in Section 6, Township 2 South, Range 6 East, Geocode 06-0799-06-1-03-05-0000.

PT-2012-15: Tract 2 consisting of .79 acres, and improvements, in Section 31, Township 1 South, Range 6 East, Geocode 07-06-0905-31-4-01-50-0000.

(CTAB transcript, Appeal Forms.)

3. The Taxpayer purchased the subject property in 2004 for approximately \$1,000,000.00. The property included an operational café and a working stockyard. Prior to a boundary re-alignment, the land was divided into five contiguous parcels in Gallatin County. The parcels were not zoned nor were they located within the city limits. The DOR classified these parcels as agricultural. (Testimony Huyser, Taxpayer CTAB Exh. 2, p. 3.)
4. Taxpayer testified that, in late 2007 through early 2008, the land was under contract for purchase as part of an overall development. In anticipation of the development, the land was annexed into the Bozeman

city limits and zoned. The zoning boundaries did not match the parcel boundaries at that time. (Testimony Huyser, DOR Exh. B, p. 4.)

5. Ms. Huyser testified that, in late 2008, the development plans were abandoned and she retained ownership of the land. (Testimony Huyser.)
6. On October 6, 2009, the Taxpayer filed an appeal with the Gallatin CTAB, contesting the DOR's \$2,729,889 assessments of the existing parcels. The Gallatin CTAB failed to hear the case prior to adjourning for the year. Under the tax statute, the values requested by the Taxpayer were granted by default. (§15-15-103 (2), MCA, Testimony Rowe, Appeal Forms, October 6, 2009, CTAB Letter to Taxpayer, July 12, 2010.)
7. The requested and automatically-granted values before the CTAB were as follows, totaling \$338,000:

#2009-141: (GEO code 06-0799-06-1-03-05-0001) consisting of 12 acres valued at \$204,000 for the land, \$30,000 for the improvements.

#2009-142: (GEO code 06-0905-31-4-01-50-0001) consisting of 1 acre, valued at \$40,000 for the land, \$15,000 for the improvements.

#2009-143: (GEO code 06-0799-06-1-12-12 RRRW) consisting of .52 acres valued at \$22,000 for the land, \$2,000 for the improvements.

#2009-144: (GEO code 06-0905-31-4-01-65-0000) consisting of .55 acres valued at \$25,000.

(CTAB Letter to Taxpayer, July 12, 2010.)

8. In 2011, the Taxpayer had the boundaries of the five parcels re-drawn in order to reflect the zoning designations. A new Certificate of Survey was sent to the DOR. This precipitated new assessments and geocodes for each parcel, based on the size and use. (Testimony Huyser, Rowe, DOR Exh. B, p. 6).
9. DOR determined the following values, totaling \$996,896:

Tract 1 consisting of 0.51 acres, \$98,156 for the land.

Tract 4 consisting of 13.77 acres, \$391,600 for the land and \$28,062 for the improvements.

Tract 5 consisting of 0.31 acres, \$93,730 for the land

Tract 3 consisting of 0.85 acres, \$195,175 for the land and \$36,370 for the improvements.

Tract 2, consisting of 0.79 acres, \$104,353 for the land and \$49,450 for the improvements.

(DOR Exh. A, Testimony Rowe.)

10. Upon receiving the assessments for 2012, the Taxpayer filed a Request for Informal Review on May 29, 2012, asking for an informal review meeting due to dissatisfaction with the DOR appraisals. (AB26 forms, DOR Exh. C.)

11. The DOR, after review, made no adjustments. (Testimony Rowe, AB26 Forms, DOR Exh. C.)

12. Taxpayer filed an appeal with the Gallatin CTAB requesting the following values, totaling \$333,062:

Tract 1, consisting of 0.51 acres, \$25,000 for the land.

Tract 4, consisting of 13.77 acres, \$180,000 for the land, \$28,062 for the improvements.

Tract 5, consisting of 0.31 acres, \$10,000 for the land.

Tract 3, consisting of 0.85 acres, \$40,000 for the land and \$0 for the improvements.

Tract 2, consisting of 0.79 acres, \$35,000 for the land and \$15,000 for the improvements.

(Appeal Forms, CTAB Transcript.)

13. The appeals were heard on September 5, 2012 by the Gallatin CTAB. After the hearing, the CTAB set the following values, totaling \$824,015:

PT-2012-11: Tract 1, 0.51 acres at \$50,000 (a reduction of \$48,156.)

PT-2012-12: Tract 4, 13.77 acres at \$391,600 and improvements at \$28,062 (upheld DOR value.)

PT-2012-13: Tract 5, 0.31 acres at \$40,000 (a reduction of \$53,730.)

PT-2012-14: Tract 3, 0.85 acres at \$175,000 (a reduction of \$20,175 to land value only.)

PT-2012-15: Tract 2, 0.79 acres at \$104,353 and \$35,000 for improvements (a reduction in improvement value of \$14,450.)

(Appeal Forms, DOR Exh. E.)

14. The Taxpayer appealed to this Board on September 26, 2012, stating:

PT-2012-11, PT-2012-12, PT-2012-13, PT-2012-14 and Pt-2012-15: ...I was unhappy with the adjustment that the appeal board granted me since they relied heavily on useless, 3-year old bank generated appraisals that clearly do not reflect the reality we are living in. I had already been granted my first appeal in 2010 but after having to have some boundary alignments done, I am having to re-argue my case. ...

(Appellant's letter to STAB.)

15. STAB accepted the appeal and heard it on December 11, 2012.

16. At the hearing, the Taxpayer objected to the valuation of her property and requested that she keep the value she obtained in an earlier appeal in the same valuation cycle. (Testimony Huyser.)
17. Taxpayer also claimed that the DOR did not use the comparable sales method in valuing her properties. She claimed that the DOR had used 2009 bank-generated appraisals of surrounding properties in valuing her land. The Taxpayer objected to the use of these appraisals because the appraisals had been done for a bank which was involved in a bankruptcy proceeding with the owners of the surrounding land. (Testimony Huyser.)
18. The Taxpayer further claimed that the DOR informed her that it did not have any comparable sales to use for valuing her land. Further, she said that she did not receive any information on comparable sales used by the DOR.
(Testimony Huyser.)
19. The Taxpayer claimed that land values in the Bozeman area had declined. According to her testimony, raw development land values had declined by 70 percent and residential lot values had declined by 60 percent. (Testimony Huyser, Taxpayer Appeal Letter to STAB.)
20. Testifying that she had access to a current appraisal of her land, she stated that her property was recently appraised at \$412,000. Claiming that the information was confidential, the Taxpayer said that she had been allowed to reveal the appraisal, but was not given the authorization to submit the documentation. Neither the appraisal nor the reasoning behind it was submitted to this Board. (Testimony Huyser.)
21. The Taxpayer stated that the parcels all lacked city amenities, such as city sewer, water, and paved roads and that the properties could not be developed without considerable expense to provide connectivity to the city sewer, water, and road system. She testified that the City of Bozeman told her that it would

- cost roughly \$180,000 to bring these city amenities to the parcels. No documentation was submitted. (Testimony Huyser, Taxpayer Exh. 2.)
22. The Taxpayer claimed that the entire property required reclamation from sixty years of use as a stockyard, including removing debris such as tires, railroad ties, and bailing twine from the creek. (Testimony Huyser, CTAB Tr. 13, 1-2.)
23. In her testimony, the Taxpayer asserted that the zoning on Tracts 4 and 5 included certain development constraints, such as roadway and creek setbacks. She claimed that this limited the development of the land. (Testimony Huyser.)
24. According to the Taxpayer, Tract 5 (the smallest parcel at .31 acres) has no legal access without crossing a separate parcel owned by the Taxpayer, or gaining access through an easement from an adjoining landowner. To access Tract 5 through the Taxpayer's property requires crossing the creek which bisects Tract 4. (Testimony Huyser.)
25. She testified that one engineering firm informed her that it would be virtually impossible to put a bridge over the creek due to the size of the parcel and the zoning constraints. She claimed that this parcel is undevelopable. (Testimony Huyser, Taxpayer CTAB Exh. 2.)
26. In addition, the Taxpayer indicated that the area of Tract 4, west of the creek bisecting the property, suffers from lack of accessibility, and leaves a section of the property with no access without either building a bridge over the river or gaining an easement from a neighboring landowner. (Testimony Huyser, Taxpayer CTAB Exh. 2.)
27. Further, the Taxpayer noted that several acres of Tract 4 are covered with cement, and the majority of the remaining land is wetlands, making only a small part developable. (Testimony Huyser, Taxpayer Exh. 2, p. 10.)

28. She claims that there are two structures on the land that have a legal, but non-conforming use. On Tract 3, there is an existing operational café. The building itself is in the right-of-way of Griffin road and will have to be removed when the road is widened to its planned width. (Taxpayer Exh. 2, p. 8, Testimony Huyser.)
29. Ms. Huyser stated that the second building, her residence on Tract 2, is over 100 years old and in need of extensive repair. She claims, because these buildings do not conform to the parcels' current zoning, that they should be removed. Her contention is the buildings have no market value. (Testimony Huyser, CTAB Tr. p. 12.)
30. Finally, the Taxpayer claimed that the land is still agricultural, but is no longer used for agricultural purposes. (Testimony Huyser.)
31. The DOR defended its revaluation of the parcels because the boundaries and zoning had changed the legal descriptions and potential uses of the parcels. (Testimony Rowe.)
32. The DOR defended its valuation with data derived from sales of similar properties and introduced exhibits including computer assisted land pricing (CALP) models.
33. Carol Rowe, DOR commercial appraiser in Gallatin County, testified that when the DOR received the new certificate of survey in 2012, she initially used the Neighborhood 10G CALP to value the residential Tracts 4 and 5. Neighborhood 10G encompasses residential properties with city amenities, sewer, water, sidewalks, and roads. The new total property assessment was \$1.9 million. (Testimony Rowe.)
34. After the initial appraisal of the new parcels, she completed an on-site inspection and recommended the DOR change the assessments on Tracts 4 and 5. She advised that Neighborhood 3, with residential properties that

do not have city amenities, be used. (Testimony Rowe.)

35. At the time Carol Rowe suggested changing the neighborhood comparisons to reflect the lack of city services, John Elliott, DOR Lead Appraiser for Gallatin County, testified that he became involved in the process. (Testimony Elliott.)
36. Mr. Elliott testified that using Neighborhood 3 with no city amenities lowered the appraisal by \$1,091,947. (Testimony Elliott, DOR Exh. B, p. 7.)
37. Mr. Elliott added that DOR used Neighborhood 16 to value Tracts 1, 2 and 3. He stated this is a less desirable commercial neighborhood that is typically used to value industrial neighborhoods. Using this neighborhood for the valuation of Tracts 1, 2 and 3 resulted in lower market values for these three tracts. (Testimony Elliott, DOR Exh. D, p. 4.)
38. He stated that he introduced the 2009 bank appraisals that the Taxpayer referenced to give the CTAB a frame of reference for comparison. He insisted that the DOR did not use the appraisals in the valuation of her properties. (Testimony Elliott.)
39. Mr. Elliott offered CALP models, which included time-trended comparable properties used by the DOR in their valuation process of the land in question. (Testimony Elliott, DOR Exh. D.)
40. He indicated that the CALPs demonstrated that property values had increased approximately 1/2 percent per month between January 1, 2002 and July 1, 2008, the lien date for the appraisal of the land in question. (Testimony Elliott, DOR Exh. D.)
41. Mr. Elliott indicated that the DOR was not aware of the accessibility issues for Tracts 4 and 5. Therefore, no adjustments were made for the issue. He stated his belief that the adjustments made by the CTAB sufficiently address this shortcoming. (Testimony Elliott.)

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 appraised value supported by the most defensible valuation information serves as the value for ad valorem tax purposes. (ARM 42.18.110(12).)
5. 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.)
6. All lands must be classified according to their use or uses. (§15-7-103(2) MCA).
7. Changes in property ownership or classification shall result in revaluation of the property and appropriate notice, with appeal rights, sent to the owner. (§15-7-101, MCA, §15-7-102, MCA, §15-7-111 (2), MCA, §15-8-707, MCA, and §15-8-601, MCA.)
8. Homogeneous areas within each county are geographically defined as neighborhoods. The CALP model reflects the July 1, 2008 land market values. (ARM 42.18.110(7).)
9. For the taxable years from January 1, 2009 through December 31, 2014, all property must be appraised at its market value as of July 1, 2008. (ARM 42.18.124(b).)
10. The actual selling price of comparable sales must be adjusted to a value consistent with the base year. (ARM 42.20.455(1)(b).)

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 land for tax year 2011. 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 however should 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 DOR is charged with appraising property at full market value pursuant to §15-8-111, MCA. The most appropriate way to appraise property is to use the actual sale of the property or to extract data from the market, such as other sales of comparable properties.

First, Taxpayer challenges DOR's valuation of the parcels, depriving her of the reduced value she obtained by appeal in 2010. However, the subsequent re-drawing of property lines and reclassification by zoning has changed the legal description and uses for the parcels which requires revaluation under the statutes. *See* POL 7.

Further, the Taxpayer contends that the DOR wrongly valued her land by not using the comparable sales method, but by using 2009 bank-generated appraisals of the surrounding land. DOR submitted into evidence the CALP calculations clearly indicating that comparable sales were used. There was no indication that the 2009 bank appraisals were used for valuation purposes and, thus, we find no merit in the argument.

The Taxpayer also contends that the lack of access to two of the parcels, Tracts 4 and 5, devalues the properties but did not submit any evidence of the devaluation. Upon review of the certificate of survey, the west side of Tract 4 is legally accessible

from the future extension of Griffin Road. Tract 5 is accessible from Taxpayer's land. The Taxpayer herself voluntarily split the properties but did not explain why she created lots with access problems. We find the evidence does not support further reduction in value for accessibility issues.

The Taxpayer asserts the improvements that are considered legal and non-conforming lack market value. Both the house and café, however, are currently in use. Moreover, this designation allows for these improvements to continue to be utilized and maintained as such. The Board thus finds this argument to be without merit.

The Taxpayer argued the lack of city amenities, such as water and sewer, devalues the property because of the excessive cost to acquire those services before the property can be developed. The DOR appraisers testified that these insufficiencies were taken into consideration by the use of a CALP model for properties without city amenities. We find the DOR has shown by a preponderance of evidence that it did consider any possible deficiencies and that the property values are correct.

Finally, the Taxpayer claims significant stream reclamation needs to be done before the properties can be marketed. Without having any documentation providing a cost estimate for the reclamation, we find no evidence to determine a proper reduction in the DOR appraisals.

After reviewing all of the evidence, and considering that the values have been reduced twice since the boundary re-alignment, we find that the Taxpayer, through these reductions, has already received adequate accommodation for the shortcomings she described.

Although the Taxpayer provided arguments for reducing the appraisals throughout the hearing, she did not provide documentation proving that the DOR's appraisals are incorrect. In this case, the Gallatin County Tax Appeal Board reduced

the value of the properties and improvements to \$824,015, to address some of the various deficiencies noted by the Taxpayer. The DOR did not appeal those valuation adjustments. We find the Taxpayer did not meet her burden of proof to further reduce the values, and we uphold the values of the Gallatin CTAB.


Thus, it is the opinion of this Board that the decisions of the Gallatin County Tax Appeal Board be upheld.

Order

IT IS THEREFORE ORDERED by the State Tax Appeal Board of the State of Montana that the subject properties' values shall be entered on the tax rolls of Gallatin County at the value set by the Gallatin County Tax Appeal Board.

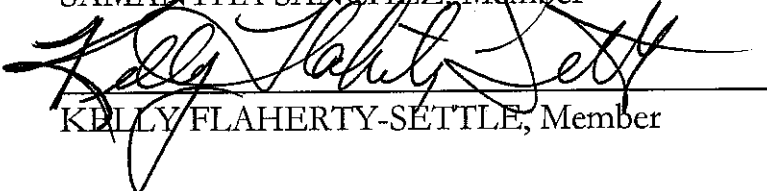
DATED this 12th day of February, 2013.

BY ORDER OF THE
STATE TAX APPEAL BOARD


KAREN E. POWELL, Chairwoman

(SEAL)


SAMANTHA SANCHEZ, Member


KELLY FLAHERTY-SETTLE, 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 13th day of February, 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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