

BEFORE THE STATE TAX APPEAL BOARD
OF THE STATE OF MONTANA

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|--------------------------|---|------------------------|
| JOLENE A. MURRAY and |) | |
| HARVE D. MURRAY, |) | DOCKET NO.: PT-2009-78 |
| Appellant, |) | |
| |) | |
| -vs- |) | FACTUAL BACKGROUND, |
| |) | CONCLUSIONS OF LAW, |
| |) | ORDER and OPPORTUNITY |
| DEPARTMENT OF REVENUE |) | FOR JUDICIAL REVIEW |
| OF THE STATE OF MONTANA, |) | |
| |) | |
| Respondent. |) | |

Jolene A. Murray and Harve D. Murray (Taxpayers) appealed a decision of the Missoula County Tax Appeal Board (CTAB) relating to the Department of Revenue's (DOR's) valuation of their property identified as Lot 0B2, Block XXX of the Beeler Addition, Section 25, Township 15N, Range 22W, of Missoula County, Montana. Taxpayers claim the DOR overvalued their property for tax purposes and seek a reduction in the value assigned by the DOR. A hearing was held by the Missoula County Tax Appeal Board at which Taxpayers were represented by themselves and Patty Lovaas. The DOR was represented by Wes Redden, area manager. A hearing on the record was held by the State Tax Appeal Board (Board).

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 did the Department of Revenue determine an appropriate market value for the subject property for tax year 2009?

Summary

Jolene A. Murray and Harve D. Murray are the Taxpayers in this action and therefore bear 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 upholds the findings of the Missoula County Tax Appeal Board.

Statement of Evidence

1. Due, proper and sufficient notice was given of this matter. This matter was set to be heard on the record pursuant to §15-2-301(2), MCA, without opposition by the parties. All parties received the transcript of the county tax appeal board and were afforded opportunity to submit additional evidence.
2. The property at issue is a one acre residential lot at 23725 Huson Road, Huson, described as Lot OB2, Block XXX of the Beeler Addition, Section 25, Township 15N, Range 22W, of Missoula County, Montana. (DOR Exh. A-9, Appeal Form.)
3. The subject property improvements consist of a shed, a lean-to shed and a garage. (DOR Exh. A-9 through A-11.) While there is some reference in the transcript to a mobile home, it is not at issue in this case. *See* §15-8-408, MCA.
4. The Taxpayers have resided on Huson road in the Huson area of Missoula County for 30 years. (Ms. Murray Testimony.)
5. For tax year 2009, the DOR valued the subject property at \$149,400 by determining the land value at \$101,300 and the improvement value at \$48,100. (DOR Exh. A-9 and CTAB Tr.)

6. The Taxpayers are appealing the value of the land and improvements and are asking for a total value of \$60,670. (Appeal Form.)
7. The Taxpayers filed an appeal with the Missoula County Tax Appeal Board (CTAB) on September 29, 2009, stating: “Excess value on top of excess value. Value in excess of market. Reappraised without notice in previous cycle. Arbitrary valuation methods used without enabling legislation. Our income is below the federally adjusted gross income.” (Appeal Form).
8. A hearing before the Missoula CTAB was held on May 4, 2010. The Taxpayers were represented at the CTAB hearing by Patty Lovaas. Ms. Lovaas and Ms. Murray signed confidentiality agreements allowing the DOR to disclose documents and materials used in valuing the subject property. (CTAB Tr.)
9. Ms. Lovaas submitted several exhibits during the CTAB hearing. (Exhs. 1 through 7.) The exhibits included photos and articles that were not relevant to valuing the property.
10. The DOR used a Computer Assisted Land Pricing (CALP) model to establish the land value of \$101,300 for the subject property. The CALP is based on sales of 171 different properties. There was no indication that the sales were not arms length sales. (DOR Exh. B; CTAB Tr.)
11. The CALP sales and the subject property are all located within Neighborhood 27 of Missoula County (the Frenchtown area). (DOR Exh. B and CTAB Tr.)
12. The DOR determined that one acre is the base size for valuing lots in Neighborhood 27. The first acre is valued at \$101,300 and each additional acre would be valued at \$5,700. (DOR Exh. B.) All of the

- sale properties used in the CALP were bare tract land and had sale dates prior to the revaluation date of July 1, 2008. (CTAB Tr.)
13. The DOR utilized the cost approach to value the improvements on the property. (DOR Exh. A-9.)
 14. Using the cost approach, the DOR calculated a value of the improvements as new construction, and depreciated the value of the buildings to reflect their age and condition. (DOR Exh. A-10.)
 15. The Taxpayers testified they believe the property sales in the DOR's CALP model are high-end subdivisions and the sales in those subdivisions do not compare with their property (Lovaas Testimony.)
 16. The CTAB reduced the land value to \$81,209 for a total value, with improvements, of \$129,309. (CTAB decision attached to Appeal form.) Due to a mailing issue, the Taxpayers did not receive the CTAB decision until May 26, 2010. (Ms. Murray Testimony.)
 17. The Taxpayers appealed to this Board on June 22, 2010. Their reason for appealing was stated as: "I contended that the land & building along with the mobile home should be valued at 60,670.00 as recorded on the taped session. Unfortunately I was in error when I filled out the appeal form. I have not received the tapes from the CTAB yet. Once received I will give more details. Thank you – I also believe the comp sales are not correct (*sic*) not average of 81,209.00. The comp. properties I supplied are close to mine than compared to exclusive subdivisions, which the state used. (Appeal Form.)
 18. Taxpayers submitted a statement to this Board on August 20, 2010 listing the points of their appeal and submitting materials. First, they criticized the CALP models 27 and 28 as flawed ("Exhibit A"). "Neighborhood 28 showed 41% of the value reported was invalid as

these parcels were either agriculture land, common areas not taxed, forest land or tract land.”

19. Second, Taxpayers submitted Exhibit B listing eight properties, sold for an average of \$62,114, which they consider comparable to their property but not included in the DOR CALP.
20. Third, Taxpayers contend the CTAB decision erred in stating that they were not contesting the value of the improvements and cite page 61 of the transcript of the CTAB hearing in which the Taxpayers assert the \$60,670 value they requested includes the improvements.
21. Finally, Taxpayers claim they are long-time residents of the neighborhood and have not seen land sell for the value put on their property by the DOR. They claim the appeal process is difficult and unfair.

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. The appraised value supported by the most defensible valuation information serves as the value for ad valorem tax purposes. (ARM 42.18.110(12).)
7. For the taxable years from January 1, 2009, through December 31, 2014, all class four properties must be appraised at its market value as of July 1, 2008. (ARM 42.18.124(b).)
8. 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.)
9. The actual selling price of comparable sales must be adjusted to a value consistent with the base year. (ARM 42.20.454(1)(h).)
10. 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 2009.

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).

This Board concludes the evidence presented by the DOR did support the values assessed.

Evidence Presented by Lovaas on Behalf of Taxpayers

The evidence submitted by Taxpayers and their representative, Patty Lovaas, at the CTAB hearing were the same exhibits presented in a prior case before this Board, *Glen Green v. Department of Revenue*, PT-2009-64. In summary, we found the materials submitted from the MLS listing (here as Exhibit A) were not persuasive in valuing the land as most of the properties had improvements. Land is valued by comparing the sale prices of comparable bare land parcels, as the CALP did. The two bare land sales that were in the correct neighborhood, Neighborhood 27, were included in the CALP but earlier sales at a higher price. The DOR did not have a record of the later sales, possibly because no realty transfer certificate was filed and therefore, the DOR has no proof the sales were valid arm's length transactions as required by §15-8-111(2), MCA.

Ms. Lovaas also submitted MLS listings for properties sold between July, 2006 and June, 2008 as she had noted these had been removed from the CALP. She asserted the DOR selectively used the highest-priced sales because 2006 was when the market went up. (TR. p. 36.) Once again, all but a half-dozen of the MLS sales include improvements and are not comparable. It is also unclear

if they are in the appropriate neighborhood and their prices have not been time-trended.

Those later sales represented the peak of the markets, and would have increased the valuation of all property in the neighborhood. *See Green v. DOR*, PT-2009-64. The DOR's exclusion of those later sales, therefore, helped the Taxpayers.

The analysis of the CALP done by Ms. Lovaas in Exhibit A was also problematical in that she discarded properties she considered not comparable without providing any evidence about their differences. In the interests of equalization, the DOR takes all properties in a neighborhood as comparables, assuming that the different qualities of different parcels involve subjective judgments that are not universal or quantifiable.

Ms Lovaas also discarded properties that had "discrepancies" between their sale prices and their present assessed value as she considered them to be errors. As we have previously stated in the *Green* case, in finding a fair market value of property, the important fact is the sale price, not the current usage. Property can be purchased at building-site prices for future housing development, but maintained as grazing or timber land until the housing market makes development feasible. There is no requirement in law that the sale price and the assessed value match.

Ms. Lovaas also removed parcels she said were valued as "tract lands" without explaining why that was a problem. All building lots are called tract lands. Similarly, she removed land that was not "primary lots."

Nor did her analyses time-trend the properties she did consider comparable to the assessment date of July 1, 2008, which can make a significant difference in a volatile market. 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, the property must be valued for tax purposes on July 1, 2008. Sales that took place prior to that date are time-trended to achieve a market value for the date of valuation. Time trending requires calculating the average increase or decrease per month in a specific area and applying the percent change to verified sales data. (CALP DOR Exh. B.) Sales that occurred after the valuation date may not be used in any way for valuation of the property. Thus, all taxpayers are subject to the same market effects by virtue of the same tax appraisal date.

It is also significant that, at the end of her CALP analysis, she gives the totals for the sales she excluded and the sales she included as comparables. The average price per acre of the excluded sales, calculated without time trending or first acre/residual breakdown, is only \$14,099 while the parcels she included averaged \$25,396. This undermines the essence of her argument because the sales she excluded were not the ones that raised the value of the subject property. She arrives at her \$25,396 price per acre by ignoring the accepted principles of appraisal that require time-adjustment of prices and a breakdown of prices into first-acre/residual acre values.

The question of the past value from the last appraisal cycle on the CALP was addressed in the *Green* case. It was a simple error on the CALP but it was correct on the property records cards and the assessment notices that went to Taxpayers. The incorrect past value was not part of the calculations or the phase-in of new values, and so had no affect on the 2009 value.

Evidence Presented by the Department of Revenue

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).

The DOR used a CALP model based on verified land sales in Neighborhood 27, which includes the subject property. This is a method that incorporates market data to determine value for land parcels. In this case, the CALP model indicated a value of \$101,300 for the first acre of land and \$5,700 per acre for each residual acre. Thus, since the subject property is one acre, the value was set at \$101,300. None of Taxpayers' calculations show a first-acre analysis but rather rely on average price per acre.

Summary

The Taxpayers submitted evidence of sales in the Frenchtown area not in the CALP (CTAB Exh. 3). The CTAB accepted Taxpayers' data about neighboring sales, averaged the ones that were similar in date and location, and lowered the land value to \$81,209. The DOR has not appealed that holding and this Board affirms the CTAB value.

The CTAB decision states that only the land was on appeal. Taxpayers contend in their appeal this was incorrect and cite page 61 of the transcript where Taxpayers assert both values are on appeal. However, on pages 91 – 92, the matter arises a second time with greater clarity. The CTAB members once again affirm only the land value was questioned on the appeal form. Taxpayers assert the DOR has mistakenly valued one of their buildings. The DOR agrees to revisit the property and reconsider the value and Taxpayers agree to that. The CTAB members remark that those values can be appealed in a later year. Thus, the improvements value was properly not part of the decision and no materials relating to the value of the improvements were submitted to this Board.

Therefore, the Board upholds 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 Missoula County at a 2009 tax year value of \$81,209, as determined by the Missoula County Tax Appeal Board.

Dated this 18th of October , 2010.

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 18th day of October, 2010, 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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