

BEFORE THE STATE TAX APPEAL BOARD
OF THE STATE OF MONTANA

FLEMING HOLDINGS, L.L.C.)	DOCKET NO.: PT-2009-92
)	
Appellants,)	
-vs-)	FACTUAL BACKGROUND,
)	CONCLUSIONS OF LAW,
THE DEPARTMENT OF REVENUE OF THE STATE OF MONTANA,)	ORDER and OPPORTUNITY
)	FOR JUDICIAL REVIEW
Respondent.)	

Statement of Case

Fleming Holdings, L.L.C. (Taxpayer) appealed a decision of the Madison County Tax Appeal Board (CTAB) relating to the Department of Revenue’s (DOR) valuation of their property identified as Section 05, Township 07S, Range 03E, Lot 4 and Lot 70, Spanish Peaks Resort, a major subdivision of Madison County, State of Montana. The Taxpayer argues the DOR overvalued the property for tax purposes, and they seek a reduction in value assigned by the DOR. The matter was heard before the State Tax Appeal Board on the record.

The Board having fully considered the testimony and exhibits from the record made before the Madison County Tax Appeal Board and all matters presented to this Board finds and concludes the following:

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

Fleming Holdings, L.L.C. is the Taxpayer in this proceeding and, therefore, has the burden of proof. Based on a preponderance of the evidence, the Board affirms the decision of the Madison County Tax Appeal Board.

Evidence Presented

1. Due, proper and sufficient notice was given of this matter. The matter was set on the record, without protest by the parties. Both parties were afforded the opportunity to submit additional written statements to the Board.
2. The subject properties are two individual lots, Lot 4 with 1.06 acres and Lot 70 with .97 of an acre, both are vacant land described as:

Section 05, Township 07S, Range 03E, Lot 4 and Lot 70, Spanish Peaks Resort, a major subdivision of Madison County, State of Montana. (Exh. A.)
3. The Taxpayer was represented in the matter by John C. Fleming, who is an officer of Fleming Holdings, L.L.C.. Ms. Ericka Brotzman also provided testimony on behalf of the Taxpayer. (CTAB Sign-in Sheet.)
4. The DOR was represented at the CTAB hearing by Mark Olson and Liz Vastaas, DOR Appraisers. (CTAB Sign-in Sheet.)
5. For tax year 2009, the DOR appraised the subject properties at a value of \$719,383 for Lot 4 and \$717,249 for Lot 70. (Appeal Form & Exh. A.)
6. The Taxpayer is asking that a value of \$445,000 be placed on each lot for the current appraisal cycle. (Appeal Form.)
7. The Taxpayer filed a Request for Informal Review (AB-26) on September 5, 2009. During the AB-26 process the DOR denied the reduction of value for the subject properties.

8. The Taxpayer filed two appeals on Lots 4 and 70 with the Madison CTAB on May 13, 2010, stating:

“The market value of this property as of July 2008 was significantly lower than the Department of Revenue Appraised Value of \$719,383(\$717,249). I will provide evidence of this over valuation at the County Tax Appeal Board hearing.” (CTAB Appeal Forms.)
9. The Madison CTAB heard the appeal on June 3, 2010.
10. The DOR used a Computer Assisted Land Pricing (CALP) model to establish the land value for the subject properties. The CALP is based on sales of 68 vacant land properties. There was no indication that the sales were not arms length sales. (DOR Exh. E; CTAB Testimony.)
11. The Taxpayer submitted a spreadsheet showing 16 neighboring properties’ sale dates and sale prices. This spreadsheet also depicts resale prices and dates for five of those properties. All but one of the resale dates are beyond the valuation date of July 1, 2008. (CTAB Exh. 4.)
12. The CALP sales and the subject property are all located within Neighborhood 625 , which consists of properties in both Gallatin and Madison Counties. (DOR Exh. G.)
13. The DOR determined that one acre is the base size for valuing lots in Neighborhood 625. The first acre is valued at \$579,000 and each additional acre would be valued at \$19,120. (DOR Exh. E.) All of the sale properties used in the CALP were bare tract land in Gallatin County and had sale dates prior to the revaluation date of July 1, 2008. (Olson Testimony.)
14. The DOR also applied a positive influence factor of 124% to the value of Neighborhood 625 properties in Madison County. The influence factor was derived by reviewing the higher sales prices of 68 properties sold in the Madison County portion of the Spanish Peaks Resort. These

- influences were based on special locational differences and amenities, such as open space, views and ski-in & ski-out access of a lot. (DOR Exh. F, Olson Testimony.)
15. The Taxpayer does not believe the subject properties have these special locational differences and amenities and should not be subject to the influence factor. (Fleming Testimony, Taxpayer Pre-hearing submission.)
 16. The Taxpayer submitted pictures of different attributes of properties in the neighborhood. (CTAB Exh. 6.)
 17. The Taxpayer purchased the subject properties in 2005, Lot 4 in March for \$495,000 and Lot 70 in May for \$730,000. The Taxpayer was given a founder's discount of 10% because he was a member of the Spanish Peaks Club, in effect reducing the above purchase prices. (CTAB Exh. 1.)
 18. The Madison County Tax Appeal Board upheld the DOR value.
 19. The Taxpayer appealed to this Board on June 29, 2010, stating:
 - “1. Mark Olsen(*sic*), Area Manager made erroneous/inaccurate statements in the record during my hearing with the Madison County Tax Appea(*sic*) Board. There has been a misrepresentation of a material fact in my case, which has prejudiced my case. Please see the enclosed letter detailing the inaccuracies.
 2. The values assigned to my properties by the Dept. of Revenue are considerably in excess of market values existing at the valuation date.” (Appeal Form.)
 20. A letter was attached to the appeal form outlining the Taxpayer's concerns with evidence presented at the CTAB hearing. Although the DOR did not validate the sale of Lot 2 of the same subdivision as the subject properties because it was sold at a Sheriff's sale, the Taxpayer believes this is the closest comparable sale to the subject properties. The Taxpayer also submitted evidence after the CTAB hearing it had not

been sold at a Sheriff's sale and therefore should have been included in the CALP. (Appeal Form Attachment.)

21. The DOR appraiser acknowledged in an email after the hearing he was mistaken and it was Lot 76 that sold at Sheriff's sale, not Lot 2. However, he didn't know how this new information would have changed the CTAB decision. (Taxpayer Pre-hearing submission, Exh. J.)

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 development of sales comparison models using Property Valuation Assessment System (PVAS) is a requirement for property valuation during the reappraisal cycle. (ARM 42.18.110(8).)
5. The appraised value supported by the most defensible valuation information serves as the value for ad valorem tax purposes. (ARM 42.18.110(12).)
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 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.

Given the statutory definition of market value, *i.e.*, the value at which property would change hands between a willing buyer and a willing seller, the “market” approach using comparable sales is the preferred approach in valuing residential property when adequate data is available. This Board concludes the evidence presented by the DOR did support the values assessed. This Board also concludes the Taxpayer has not provided evidence that the DOR appraised value for July 1, 2008 is not fair market value.

In this case, the Taxpayer supplied information about the sales of the subject property and sales of other properties in the same neighborhood. All of these sales occurred prior to the valuation date and none were time-trended to July 1, 2008. The Taxpayers also tried to show declining value with resale prices on certain properties. Unfortunately, all but one of these resales were beyond the valuation date and the one that was within said date showed an increase in value. (EP. 11.)

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 must be 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. Sales that occurred after the valuation date may not be used

for valuation of the property. Thus, all taxpayers are subject to the same market effects by virtue of the same tax appraisal date.

The Taxpayer also argued the DOR's use of the CALP penalized the subject properties because they do not have amenities compared to most of the properties used as comparables. In this case, however, the Taxpayer presented no evidence that the individual property did not fit properly into the CALP calculations and the Madison County influence factor. The mass-appraisal techniques developed by the DOR are designed to find the value on the open market. For this, the DOR used a CALP model based on 68 verified land sales in Neighborhood 625, and an influence factor calculation which included the subject properties.

There is no indication that the Department's valuation suffers from any errors or is miscalculated in any manner. The evidence presented by DOR is sufficient to show accurate land valuation as of the assessment date of July 1, 2008, and the Taxpayer has failed to meet his burden to show that the DOR has erred.

Thus it is the opinion of this Board that the assessed value set by the DOR is correct the decision by the Madison County Tax Appeal Board is affirmed.

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 Madison County at a 2009 tax year value of \$719,383 for Lot 4 and \$717,249 for Lot 70, as determined by the Department of Revenue.

Dated this 19th 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 20th 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:

Fleming Holdings, L.L.C. 5120 N. Kilbourn Ave. Chicago, IL 60630	<input checked="" type="checkbox"/> U.S. Mail, Postage Prepaid <input type="checkbox"/> Hand Delivered <input type="checkbox"/> E-mail
--	--

Mark Olson Liz Vatsaas Madison County Appraisal Office P.O. Box 307 Virginia City, Montana 59755-0307	<input checked="" type="checkbox"/> U.S. Mail, Postage Prepaid <input type="checkbox"/> Hand Delivered <input type="checkbox"/> E-mail <input type="checkbox"/> Interoffice
---	--

Michelle R. Crepeau Office of Legal Affairs Department of Revenue Mitchell Building Helena, Montana 59620	<input type="checkbox"/> U.S. Mail, Postage Prepaid <input type="checkbox"/> Hand Delivered <input type="checkbox"/> E-mail <input checked="" type="checkbox"/> Interoffice
---	--

Laurie Buyan, Secretary Madison County Tax Appeal Board P.O. Box 278 Virginia City, Montana 59755	<input checked="" type="checkbox"/> U.S. Mail, Postage Prepaid <input type="checkbox"/> Hand Delivered <input type="checkbox"/> E-mail
--	--

/s/ _____
DONNA EUBANK
Paralegal