

BEFORE THE MONTANA TAX APPEAL BOARD

Leonard & Marita Keppler,

Appellants;

v.

State of Montana,
Department of Revenue,

Respondent.

CASE No: PT-2015-24

**Findings of Fact,
Conclusions of Law, Order,
and Opportunity for Judicial
Review**

Before the Board is Appellants Leonard and Marita Keppler's appeal of Respondent State of Montana, Department of Revenue's (DOR) valuation of their land in Missoula County. They appeal from the Missoula County Tax Appeal Board's (CTAB) decision of November 22, 2015 denying their appeal for reduction of the value of Kepplers' property at 816 Beargrass Ln., Seeley Lake; geocode 04-2759-31-2-03-13-0000, legal description Streit's Inez Lakeshore Sites, S31, T18 N, R15 W, N 117' of Lot 6 & Portion D COS 5328.

ISSUE

1. Whether DOR has equitably assessed Kepplers' property for tax year 2015.

2. Keplers argue DOR assessed the subject property at a higher amount per acre than nearby comparable properties, and that the land should be valued at \$88,570.
3. DOR responds that the subject and neighboring properties are not valued on a per acre basis, but rather on a fixed one acre value adjusted by a lesser residual rate for additional acres in the parcel.

FINDINGS OF FACT

4. The Board conducted a hearing April 21, 2016 at 10:00 AM at 600 N. Park Ave., Helena at which the following were present:
 - a. Leonard Keppler, self-represented taxpayer;
 - b. Marita Keppler, self-represented taxpayer;
 - c. Elizabeth Roberts, attorney for DOR;
 - d. Leslie Snyder, DOR region 4 area manager, as witness for DOR.
5. The record considered included all materials submitted to the county tax appeal board, the transcript of the hearing at the county tax appeal board, and additional materials submitted by the parties.
6. The following exhibits were admitted:
 - a. Keppler exhibits;
 - i. 1 – certificate of survey of Streit’s Lake Inez lakeshore sites,
 - ii. 2 – aerial photo of Streit’s Lake Inez lakeshore sites,

- iii. 3 – annotated copy of exhibit 1,
- iv. 4 – property record card excerpt compilation,
- v. 5 – DOR reappraisal plan 2015-2020 excerpt (page 4),
- vi. 6 (sealed) – packet of sales in neighborhood 24.L and property record cards,
- vii. 7 – map of Streit’s Lake Inez lakeshore sites with annotations,
- viii. 8 – handwritten spreadsheet titled “Comparable land on Lake Inez & Streits,”
- ix. 9 – photos (6) of subject property,
- x. 10 – property record card of subject property,
- xi. 11 (sealed) – valuation model for neighborhood 24.L,
- xii. 12 – packet of
 - 1. photos (3) of neighboring Pierce property,
 - 2. property record card for 200 Renzim Ct., Seeley Lake,
 - 3. (sealed) MLS sheet for 1025 Golf View Dr., Seeley Lake,
 - 4. handwritten spreadsheet titled “Comparable house recently sold on Creek and golf course,”
- xiii. 13 – property record card for 1025 Golf View Dr, Seeley Lake,

xiv. 14 – summary of argument, and

b. DOR exhibits;

i. A – property record card for subject property,

ii. B – aerial and ground-based photos of subject property,

iii. C – real estate listing sales brochure of subject property,

iv. D (sealed) – Computer Assisted Land Price (CALP) valuation model for neighborhood 24.L,

v. E (sealed) – selected sales in neighborhood 24.L,

vi. F (sealed) – Lake Inez sales,

vii. G (sealed) – Salmon Lake sales,

viii. H – covenant restricting construction on 0.89 acre parcel.

Procedural History

7. Keppler's filed an AB26 appeal with DOR disputing the land value of their property on Lake Inez outlet, citing a covenant restricting development on part of the land. (CTAB Ex. B.)
8. During the AB26 review of the property, DOR reduced the value of the 0.89 acre covenanted parcel by considering it non-buildable, resulting in a revised value of \$3,418. (MTAB Hrg. Transcr. 44:7-9; 9:11-12.)
9. DOR also reduced the grade of the improvements from very good to good. (Id. 44:10-11.)

10. Prior to the AB26 the property had been appraised using a market approach. The reduced grade resulted in the property not being suitably similar to those in the neighborhood to allow DOR to use a market method for appraising the improvements. That is, there were insufficient comparable properties for a market approach. Consequently, DOR changed the appraisal method to cost. Ironically, this reduction in land value and grade resulted in an *increase* in the appraised value of the improvements. (Id. 43:21-45:6.) Such an outcome, although technically proper, exposes some of the limitations of a mass appraisal system, and is justifiably frustrating from a taxpayer's perspective.
11. Keppler's appealed only the land value ruling of the AB26 to the Missoula County Tax Appeal Board (CTAB). (CTAB Property Tax Appeal Form.) The CTAB denied Kepplers' appeal, and Kepplers timely appealed to this Board.

Subject Property

12. The total subject property is 1.80 acres located on Lake Inez, specifically the Clearwater outlet on the lake's southern end. (Ex. A, B.)
13. The property is composed of two parcels: a 0.91 acre parcel with a residence (Ex. A.), and a 0.89 acre parcel subject to a covenant that prohibits structures requiring water or sewer facilities (Ex. H.)

Lake Access

14. Kepplers contend the property's location on the Clearwater outlet of Lake Inez reduces its value because of limited or difficult boat access to

the lake as compared to lakeshore frontage lots. (MTAB Hrg. Transcr. 10:1-20.)

15. However, Keplers' sales brochure for the property belies this contention. The document proclaims "access to Lake Inez" without qualification and notes the property's boathouse and dock. (Ex. C.)
16. Furthermore, aerial and ground-based photographs of the area show docks on both side of the outlet, and docks to the north and south of Keplers' dock. (Ex. B.) Those to the south (downstream and further from the body of Lake Inez) of Keplers' property have a pontoon boat and speed boat docked at them. (Ex. B.)
17. While access is more seasonally limited than lakeshore frontage, Keplers' location on the outlet is not so marginal as to jeopardize lake access.

Calculations

18. Keplers argue their property is overvalued on a per acre basis when compared to similar nearby properties.
19. DOR counters that a straight line per acre model does not accurately reflect market value. The DOR model uses the commonly accepted practice of starting with a base acre plus or minus a residual adjustment to account for more or less acreage.

Kepler Method

20. Keplers submitted property record cards (Ex. 12), a map (Ex. 7), and valuation calculations (Ex. 8), for their property and 4 nearby

properties all located on the east shore of the Clearwater outlet to the lake.

21. The comparison properties range from 1.89 to 3.017 acres and are valued by DOR between \$255,192 and \$269,618. (Ex. 8.)
22. Kepplers divided DOR's valuation of each land parcel by its acreage to calculate a per acre value for each comparison, ranging from \$89,366 to \$135,022 per acre. Using this method, Kepplers' 0.91 acre parcel is valued at \$266,226 per acre. (Ex. 8.)
23. It is worth noting that Kepplers' calculations ignore the acreage and valuation of the 0.89 parcel. If included, Kepplers' property is valued at \$136,703 per acre.¹
24. More importantly, however, Kepplers' per acre valuation model fails to accurately reflect the actual market price paid for several of their comparison properties, specifically #2 and #5, which if Keppler's model was applied would result in a value less than 1/6th their actual recent sales prices.

DOR Method

25. The Kepplers' property is located in DOR's 24.L valuation neighborhood which uses an acre model based on actual sales in the previous appraisal cycle in which the first acre of property is given a set value

¹ \$246,066 ÷ (0.91 + 0.89).

- (base rate) and additional acres are valued at a lesser rate (adjustment). (Ex. D.)
26. DOR Region 4 area manager Leslie Snyder testified that property is subject to diminishing marginal utility, or “scale of economy” in her words, which means that additional acres of a property are less valuable than the first acre, which is typically the homesite. (MTAB Hrg. Transcr. 62:3-21.)
 27. The 24.L model values the first acre at \$243,800 and each additional acre at \$12,800. (Ex. D.) For example, a one acre parcel would be valued at \$243,800, but a two acre parcel would be valued at \$256,600², and a three acre parcel at \$269,400³.
 28. Because the restrictive covenant on the subject parcel applies to only part of the property, DOR split the property in two for appraisal purposes.
 29. The 0.89 acre restricted by the covenant is valued at \$3,418 per the AB26 decision because the DOR reclassified the parcel as “non-buildable”, thus reducing the value.
 30. The remaining 0.91 acre is calculated by subtracting a proportional amount of the adjustment from the base rate.⁴

² \$243,800 + \$12,800.

³ \$243,800 + (2 x \$12,800).

⁴ \$243,000 - ((1 - 0.91) x \$12,800).

31. Thus DOR's valuation for Keppler's property can be expressed by the following equation:

$$(\$243,800 - ((1 - 0.91) \times \$12,800)) + \$3,418 = \$246,066$$

Base *Residual* *Adjoining .89*

32. While the model appears valid and the math is indubitably correct, the Board is somewhat perplexed by DOR's use of the adjustment rate on properties *smaller* than one acre, as opposed to a strict proportional reduction in value,⁵ particularly given DOR's justification that the smaller adjustment rate reflects diminishing marginal utility for lots *above* one acre. Said otherwise, if the property gains value at a lesser marginal rate above 1 acre, the corollary to that principle means that parcels smaller than one acre would diminish in value at a greater marginal rate than the model's adjustment accounts for.

Improvements

33. Kepplers take issue with the increase in the improvement value of the property during the AB26 which they filed related to the land only. (MTAB Hrg. Transcr. 6:10-16.)

34. Snyder testified that filing an AB-26 opens the entire property up for review, in this case resulting in re-grading of the property with a different method of appraisal, which changed methods from a market to cost valuation method. (Id. 43-44; see ¶ 10.)

⁵ i.e. $\$243,800 \times 0.91$.

35. However, Keplers did not contest the revised valuation of their improvements from the AB26 in their appeal form (Docket #1), or during the CTAB hearing (CTAB Hrg. Transcr. 4:6.)

CONCLUSIONS OF LAW

36. The Board has jurisdiction over this case and its order is final and binding upon all parties unless changed by judicial review. Mont. Code Ann. § 15-2-301.

Burden of Proof

37. The taxpayer bears the burden of proving the error of DOR's valuation. *Farmers Union Cent. Exch., Inc. v. Dep't of Revenue of State of Mont.*, 272 Mont. 471, 476, 901 P.2d 561, 564 (1995); *Western Air Lines, Inc. v. Michunovich*, 149 Mont. 347, 353, 428 P.2d 3, 7 (1967).
38. However, DOR cannot rely entirely on the presumption in its favor and must present a modicum of evidence showing the propriety of their action. *Western Air Lines*, 149 Mont. at 353, 428 P.2d at 7.

Assessment

39. "All taxable property must be appraised at 100% of its market value...." Mont. Code Ann. § 15-8-111.
40. "[T]he Legislature intended the Department to utilize both the cost approach and the market data approach, depending upon the available market data, when it assesses property and estimates market value."

Albright v. State By & Through State, 281 Mont. 196, 208, 933 P.2d 815, 823 (1997).

41. “[F]or the taxable years from (c) January 1, 2015, through December 31, 2016, all property classified in 15-6-134, MCA, (class four) must be appraised at its market value as of January 1, 2014.” Mont. Admin. R. 48.18.124.

42. To prevail in a challenge of DOR’s assessment the taxpayer must 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.

DeVoe v. Dep't of Revenue of Montana, 233 Mont. 190, 194, 759 P.2d 991, 993-94 (1988) (quoting *Maxwell v. Shivers*, 133 N.W.2d 709, 711 (Iowa 1965)).

43. “Assessment formulations’ by [the Montana Tax Appeal Board] should be upheld unless there is a clear showing of an abuse of discretion.” *Peretti v. State, Dep't of Revenue*, 2016 MT 105, ¶ 15, 383 Mont. 340,

344, 372 P.3d 447, 450 (citing *O'Neill v. Dep't of Revenue*, 2002 MT 130, ¶ 23, 310 Mont. 148, 155, 49 P.3d 43, 47).

* * *

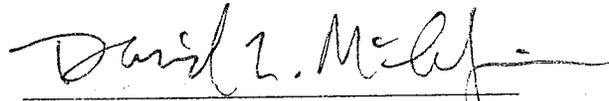
44. DOR satisfied its burden of presenting evidence supporting their valuation.
45. Keplers failed to meet their burden to prove alleged errors by DOR, specifically failing to prove prong 6 of the *DeVoe* test. Keplers' reliance on a straight per acre model for property valuation does not comport with the base plus adjustment method used in DOR's 24.L model. Use of Keplers' per acre model would vastly distort valuation of larger properties away from market price, which the department is statutorily charged with ascertaining.
46. Additionally, the Board may not consider improvement values because Keplers failed to exhaust the administrative remedy available at the CTAB. Mont. Code Ann. § 15-15-103(1).

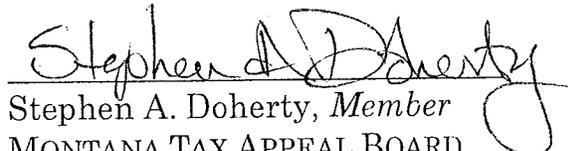
ORDER

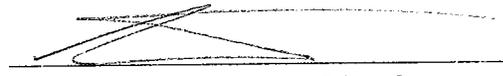
47. Leonard & Marita Keppler's appeal and complaint is **denied**.

Notice: You may be entitled to judicial review of this Order by filing a petition in district court within 60 days of the service of this Order. Mont. Code Ann. § 15-2-303(2).

Ordered July 21, 2016.


David L. McAlpin, *Chairman*
MONTANA TAX APPEAL BOARD


Stephen A. Doherty, *Member*
MONTANA TAX APPEAL BOARD


Valerie A. Balukas, *Member*
MONTANA TAX APPEAL BOARD

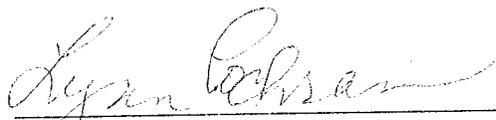
MONTANA TAX APPEAL BOARD
August 1, 2016

CERTIFICATE OF SERVICE

I certify that I caused a true and correct copy of the foregoing Findings of Fact, Conclusions of Law, Order, and Opportunity for Judicial Review to be sent by United States Mail via Print and Mail Services Bureau of the State of Montana on July 21, 2016 to:

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6050 Shady Pines Rd.
Helena, MT 59601

Elizabeth Roberts
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Office of Legal Services
P.O. Box 7701
Helena, MT 59604-7701



Lynn Cochran, *Administrative Officer*
MONTANA TAX APPEAL BOARD