

BEFORE THE MONTANA TAX APPEAL BOARD

FILED

OCT 18 2016

Montana Tax Appeal Board

William & Susan Antonioli,

Appellants;

v.

**State of Montana,
Department of Revenue,**

Respondent.

CASE No: PT-2015-21

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

Before the Board is Appellants William and Susan Antonioli's appeal from the Anaconda-Deer Lodge County Tax Appeal Board's decision of November 18, 2015 denying Antonioli's appeal of Respondent State of Montana, Department of Revenue's valuation of Antonioli's property at 201 Sherwood Forest Ln., Anaconda; geocode 30-1375-08-1-02-04-0000, legal description Maid Marion, S08, T05 N, R13 W, Lot 4. Acres 2.09, 359B.

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ISSUE

1. Whether DOR appropriately valued the property for tax year 2015.
2. Antonioli's argue that the DOR's assessed value for 2015-2016, which was an increase of over 22% from the DOR's 2008-2014 assessed value, is not supported by market data because property values for the Georgetown Lake market area declined during this same time period.
3. The DOR argues that the value of the Antonioli's lot was accurately determined through mass appraisal using the Department's land model that was created using the sales prices of actual land sales during the 2008-2014 reappraisal cycle.

FINDINGS OF FACT

4. The Board conducted a hearing on April 5th, 2016 at 1:00 PM at 600 N. Park Ave., Helena at which the following were present:
 - a. William Antonioli, self-represented taxpayer;
 - b. Susan Antonioli, self-represented taxpayer;
 - c. Kurt Unger, as witness for taxpayer;
 - d. Michele Crepeau, attorney for DOR;
 - e. Julie Goebel, DOR appraiser, as witness for DOR;
5. The parties argued for the property to be valued as follows:

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- a. DOR - \$141,308,
- b. Antionolis at AB-26 - \$75,000,
- c. Antionolis at CTAB - \$85,000,
- d. Antionolis at MTAB - \$61,165.

Procedural History

6. On August 20, 2015, Antionolis filed an application with DOR for informal review (AB-26) of the newly assessed 2015 value of \$141,308. (Ex. A.) The AB-26 cited no offers in the 9 years they listed the property for significantly less. (Id.) Antionolis requested the DOR reduce the value to \$75,000 on the subject property. (Id.) DOR rejected Antionoli's request.
7. Antionolis appealed the AB-26 determination to the Deer Lodge County Tax Appeal Board (CTAB), requesting a value of \$85,000. (Ex. C.) The CTAB held a hearing and considered evidence and testimony from both parties before it denied the appeal. (Id.)
8. Antionolis timely appealed to this Board. (Id.)

Subject Property

9. The property is vacant land, consisting of 2.09 acres located in the Maid Marion subdivision near Georgetown Lake. (Ex. D.)
10. DOR valued the property using the Computer Assisted Land Pricing model (CALP) software with local sales data. Six sales between March

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2008 and July 2012 were time adjusted to form a model of property values on the lien date, in this case January 1, 2014. The Georgetown Lake area is divided into at least two neighborhoods, each with a different CALP:

- a. 13.P, including Pintler Vista and Maid Marion subdivisions;
 - b. 13.E, including Elk Meadows subdivision.
11. The 13.P CALP is derived from six property sales from 2008 to 2013 in Pintler Vista and Maid Marion, identified by their number on the 13.P CALP:
- a. #1 - 2.6 acres of land sold on 6/21/2011;
 - b. #2 - 1.47 acre sale, with land values abstracted, on 7/23/2012;
 - c. #3 - Nelson purchase of 3.45 acres, as part of a 1031 exchange, on 10/14/2010;
 - d. #4 - 2.53 acres of land sold on 3/25/2008; and
 - e. two sales of the same 2.81 acres;
 - i. #5 - Dempster purchase on 4/11/2008; and
 - ii. #6 - Brandon purchase on 4/17/2009. (Ex. F.)
12. Taxpayer introduced a spreadsheet of the attributes of the area neighborhoods Pinter Vista, Maid Marion, Fish Hatchery, Elk Meadows, and Mountain View. (Ex. 7.) Taxpayer testified that despite some minor differences the neighborhoods are generally comparable.

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Dempster-Brandon (#5 & #6 - 13.P CALP)

13. Taxpayer argues that both the Dempster and Brandon purchases should be excluded from the model because they were not valid arms-length transactions, specifically because they were private sales between related parties for business purposes.
14. Both sales prices are approximately 30% higher than sales #1 and #2. (Ex. F.)
15. On April 14, 2008, William Brandon as Vice President of the Brandon-Legg Development Corporation recorded a warranty deed transferring the property to Edna Dempster. (Ex. 19.) This is sale #5 on CALP 13.P.
16. On April 17, 2009, Edna Dempster filed a quit claim deed transferring the same property to William Brandon. (Ex. 20.) This is sale #6 on CALP 13.P.
17. Taxpayer introduced an affidavit from real estate broker Patty McDonald in which she states that she is a friend of Brandon, that Edna Dempster is Brandon's life partner, and that she would not consider the transaction arms-length. (Taxpayer's Supplemental Ex. C.)
18. The 13.P CALP shows that the Dempster to Brandon sale (#6) is for exactly \$1,000 less than the Brandon-Legg to Dempster sale (#5). (Ex. F.)
19. Based on the timing of the deeds and the congruency of the purchase prices the Board concludes that the two sales taken together were not

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arms-length transactions and that neither should be included in the model.

Nelson 1031 (#3 - 13.P CALP)

20. Second, Taxpayer argues that the Nelson purchase (#3) should be excluded from the model because it was not an arms-length transaction, specifically because the purchase was part of a 1031 exchange which could distort the price.
21. The reported sales price is 40-50% higher than that for sales #1 and #4.
22. The Realty Transfer Certificate discloses that the sale was part of a 1031 exchange. (Ex. K.)
23. Taxpayer submitted an exhibit with excerpts from various sources on appraisal practice. They generally state that 1031 exchanges require the reinvestment of proceeds from a prior sale within a limited period of time, and that this constraint may result in an inflated purchase price of the reinvestment property. (Taxpayer's Supplemental Ex. A.)
24. Additionally, Taxpayer introduced an affidavit from buyers Rodney and Marilyn Nelson in which they state: "We definitely feel that we overpaid for the lot at that time but were influenced by many other factors, in spite of the inflated price," and that " 'timing' was of great influence to us" in the decision to buy. (Taxpayer's Supplemental Ex. C.)

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25. The Board concludes that the Nelson purchase was not an arms-length transaction and that the sale price was artificially inflated based on timing requirements of the Nelson's 1031 exchange.

Curran Sale

26. Third, Taxpayer argues DOR improperly excluded the sale of Lot 3 in Maid Marion from their model. Because the property sold for significantly less than many lots in the area, Taxpayer argues, its exclusion from DOR's model raises the valuation of all properties in the neighborhood.
27. Taxpayer claims the sale was an arms-length transaction for an advertised property. DOR argues that it was a private sale, and properly excluded from the model.
28. The Residential Sales Verification form, sent to and completed by the seller, states in two places that the property was advertised for sale, and that the sale was not between relatives, business partners, or related businesses. Moreover, seller did not circle the option "Private Offer." (Ex. 14.)
29. Taxpayer introduced an email chain between buyer Curran and seller Gwen and Lew Mitchell. The exchange begins in July 2012 with Curran's father emailing the Mitchells regarding their listing of Lot 3 in the Maid Marion subdivision for sale on Craigslist. Curran's father never purchased the property, but forwarded the email on to Curran. In February 2013, Curran emailed the Mitchells inquiring about the

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property, to which Mitchells responded that the property was still for sale. (Taxpayer's Supplemental Ex. C.)

30. 82 days later, Mitchells transferred Lot 3 to Chris Curran. (Ex. H.) .
31. However, the Residential Sales Verification contains a handwritten note, signed by DOR appraiser Julie Goebel, stating: "Not a typical sale – Buyer verified it as a private offer & not advertised." (Ex. H.)
32. Taxpayer introduced two affidavits from Curran. In the first, Curran states that the purchase was a private party sale, but goes on to say that he has no prior relationship to the seller and became aware of the property from postings on Craigslist and a "for sale by owner" sign posted to a tree on the property.
33. The evidence shows that the sale originated from an advertisement and consummated shortly thereafter by parties whose emails show they did not know each other. Curran confirmed this in his statement.
34. It appears Curran simply misunderstood the term of art "private sale" when responding. This is confirmed in Curran's second affidavit, in which he reiterates his lack of prior relationship to the seller, that he became aware of the property from advertisements, and that "my definition of a private party sale is a sale that occurs between two parties that choose not to use a 3rd party to administer the sale." (Taxpayer's Supplemental Ex. C.)

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35. The Board concludes, based on the evidence, that the Curran sale was an arms-length transaction, not a private offer, and was improperly excluded from the model.

* * *

36. Even DOR's 13.P CALP shows that something is amiss. All six properties in the model have actual sales prices above the January 1, 2014 time-trended value of the sales price. (Ex. F, see "Adjusted Sale Price (S) "Land Y.") In the aggregate, land in the neighborhood was worth 0.9073 times in 2014 what it was worth in 2008. (Id., see Market Adj. Factor) That is, DOR's model showed that land values decreased from 2008 to 2014, yet properties valued on this model purportedly increased in value.

CONCLUSIONS OF LAW

37. To whatever extent the foregoing findings of fact may be construed as conclusions of law, they are incorporated accordingly.
38. 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

39. The taxpayer bears the burden of proving the error of DOR's decision. *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).

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40. 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

41. All taxable property must be appraised at 100% of its market value unless otherwise provided. Mont. Code Ann. § 15-8-111.
42. 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. Mont. Code Ann. § 15-8-111(2).
43. “Since market value is defined in 15-8-111, MCA as ‘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’, it follows that if market value is to be derived from analyzing comparable sales, that the sales must represent valid ‘arm’s length’ transactions.” Page 25, 2015-2020 Montana Reappraisal Plan, Montana Department of Revenue adopted pursuant to Mont. Code Ann. §15-7-111(5).
44. Comparable properties used for valuation must represent similar properties within an acceptable proximity of the property being valued. Mont. Code Ann. § 15-8-111(3).
45. “Assessment formulations by [the Montana Tax Appeal Board] should be upheld unless there is a clear showing of an abuse of discretion.”

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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).

Taxable Years

46. For the taxable years from January 1, 2009, through December 31, 2014, all property classified in 15-6-134, MCA, (class four) must be appraised at its market value as of July 1, 2008. Mont. Admin. R. 42.18.124(1)(b).
47. "For the taxable years from 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. 42.18.124(1)(c).

* * *

48. DOR has not met its burden of presenting evidence to support its valuation. The Board finds the Taxpayers in this case have cast serious doubt on the accuracy of the value assigned to this property. We conclude the Taxpayers have overcome the presumption that the DOR correctly valued their lot.
49. Taxpayers introduced sufficient evidence to cast credible doubt on the validity of at least two of the six sales data points used in the 13.P CALP and introduced credible evidence that one sale that was excluded meets the definition of a valid sale.

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50. This Board agrees with Taxpayer's assertion that the sales between Brandon-Legg Development Corporation, Edna Dempsey and William L. Brandon were likely transfers between related parties and should not have been verified as valid. This Board concludes it is not necessary to know what the relationship between the parties actually is; the deeds themselves imply that Ms. Dempsey was acting as a straw-man to move the real property out of the corporation and to Mr. Brandon individually. Because the Department never received a sale verification letter for either of these sales from any of the parties involved in the transaction it was unable to verify either sale as valid. The Department should not have used these sales in its model without any verification that the transfers were actually arms-length transactions between unrelated parties.
51. Taxpayers submitted sufficient credible evidence to convince this Board that the Mitchell-Curran sale was an advertised arms-length transaction between unrelated parties and should have been included in the 13.P CALP, even if the model would have rejected the sale as an outlier. Mr. Mitchell marked the box on the sales verification letter stating that the lot was advertised for sale by owner. This Board finds it credible that Chris Curran may not have understood the distinction between the terms "private offer" and "for sale by owner."
52. Finally, Taxpayer presented evidence to call into question the Department's inclusion of the Nelson's sales price in the CALP model for neighborhood 13.P. While this evidence is not as compelling as the taxpayer's evidence relating to the Brandon-Legg/Dempsey

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transactions and the Mitchell-Curry sale, it does cast further doubt on whether the 13.P CALP used appropriate data.

53. After considering all the evidence, the Board has arrived at the conclusion that the Department made a mistake when it valued the Taxpayer's property using the 13.P CALP that determined the subject property's assessed value for this reappraisal cycle. The Board agrees with the methodology used in this valuation but questions the data selected to implement the methodology.
54. This Board agrees with the Taxpayers and finds that the Department failed to meet its obligation to value the subject property using verified valid sales that occurred at arms-length between unrelated parties. The Department has offered no credible explanation for why the Brandon-Legg-Dempsey and Dempsey-Brandon sales were included in the CALP model and why the Mitchell-Curran sale was excluded.
55. The evidence presented by the Taxpayer leaves us with the conclusion that the DOR's value is not market value, but our duty is to find a market value in tax appeals. This Board concludes that the most appropriate way to determine the 2015 market value for the Taxpayer lot is to start with the DOR's assessed value for 2008 and apply the market trend as calculated by Department's verified sales data used in the broader market area.
56. The DOR's own 13.P CALP shows that properties in the neighborhood experienced a 10% reduction in value. (Ex. F.) The reduction reflected in the CALP is corroborated by the testimony of DOR's witness Jerome

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Patton in a related and decided similar case. Mr. Patton testified that the verified sales data for the market area show a decline of close to 10% between January 1, 2009 and the lien date of January 1, 2014 for properties that sold in the 13.P CALP neighborhood. This testimony supports Taxpayer's basis for the appeal which stated his (DOR assessed) value increased significantly during a period when by all accounts the market value for property in the area declined. *Mark & Linda Ransford v. Dept. of Revenue*, 2016 WL 4251603.

57. Starting with the 2008 assessed value of \$115,429 and applying a 10% reduction determines that the value for the property as of January 1, 2014 is \$103,886.
58. This Board acknowledges that DOR must use mass appraisal to accomplish statewide valuations, and that DOR is not provided with enough resources to thoroughly research each and every sale. Under present law the DOR staff must rely on voluntary sales verification to validate many sales, clearly an imperfect system. However the result of that system may be imperfect CALP neighborhoods where very few sales are available as comparables. In this case we had a taxpayer and his witness who spent hours investigating and critiquing sales used to form the basis of value in this neighborhood. The results of their work produced credible evidence that the value calculated by mass appraisal methods was not market value.

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ORDER

59. William & Susan Antonioli's appeal and complaint is **granted**.
60. DOR is **ordered** to enter for tax years 2015 and 2016 a value of \$103,886 for the Antonioli's property at 201 Sherwood Forest Ln., Anaconda; geocode 30-1375-08-1-02-04-0000, legal description Maid Marion, S08, T05 N, R13 W, Lot 4. Acres 2.09, 359B.

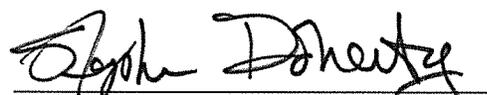
Notice: You may be entitled to judicial review of this Order by filing a petition in district court within 60 days of the service of this Order. Mont. Code Ann. § 15-2-303(2).

Ordered October 18, 2016.

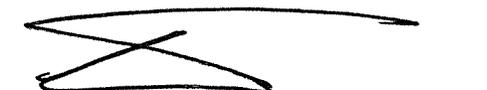




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Certificate of Service

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 October 18, 2016 to:

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