

BEFORE THE MONTANA TAX APPEAL BOARD

FILED

JAN 27 2017

Montana Tax Appeal Board

William and Judy Fink,

Appellants;

v.

State of Montana,
Department of Revenue,

Respondent.

CASE No: PT-2016-34

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

1. Before the Board is Appellant William and Judy Fink's appeal from the Granite County Tax Appeal Board's decision partially upholding Respondent State of Montana, Department of Revenue's (DOR) appraisal of Fink's property at 14 Rest Haven Lane, Anaconda; geocode 46-1374-13-1-01-13-0000; legal description Piney Point Tracts, S13, T05 N, R14 W, Lot 13A, Acres 0.79.

ISSUE

2. Whether DOR properly appraised Fink's land. The DOR's value for the improvements was not contested.

FINDINGS OF FACT

3. Taxpayers received their assessment notice for the 2015-16 appraisal cycle and timely submitted an AB-26 request for informal review of their property valuation to the DOR, which sent DOR appraiser Allen Doney to inspect the property on December 9, 2015. DOR issued its determination letter to the taxpayer denying any reduction in value.
4. Taxpayers timely filed an appeal of the AB-26 determination to the Granite County Tax Appeal Board (CTAB), which held a hearing on April 6, 2016. The DOR valued the land at \$387,542 for tax years 2015 and 2016 and Taxpayers argued for a land value of \$275,000.
5. The CTAB reduced the value of the land to \$335,000 after hearing the case and finding the Taxpayer's testimony credible about the inequity in valuing primary and secondary acreage of parcels.
6. The CTAB decided that the Taxpayers overcame their burden that the DOR value was not accurate because "[t]he Board determined that points raised by William and Judy Fink regarding extrapolation of value based upon parcel size from comparable properties used in the valuation are inaccurate. The Board decision indicates a land value of \$335,000 is an accurate estimate of the value for the property." (CTAB Decision, April 8, 2015.)

BEFORE THE MONTANA TAX APPEAL BOARD

William and Judy Fink v. DOR

7. The CTAB questioned the DOR's application of an appraisal theory called diminishing marginal utility. This theory allocates a higher value to the first acre of land as it has the highest utility for use as a home site and then significantly discounts the second and/or succeeding acres.
8. Taxpayers timely appealed the CTAB decision to this Board, and asked that the case to be heard on the record without a hearing. The record includes the complete CTAB file and a transcript of the CTAB hearing.
9. The parties were ordered to file any additional submissions with the Board on or before August 12, 2016.
10. The following exhibits were introduced and admitted unless otherwise noted:
 - a. Fink exhibits;
 - i. 1 – Final letter from Finks to MTAB outlining their reasons for appeal, dated July 27, 2016, and notifying the Board that an access road to a neighboring lot intersects their property between the home and garage,
 - ii. 2 – One page from the DOR property record card showing land valuation history increasing from \$66,965 in the previous appraisal cycle to \$387,542 in 2015-16,
 - iii. 3 – Letter from Finks to DOR asking for informal review of the land valuation dated September 30, 2015 and offering

BEFORE THE MONTANA TAX APPEAL BOARD

William and Judy Fink v. DOR

arguments for review based on values assigned to other Georgetown Lake frontage lots,

- iv. 4 – Listings and maps of 22 lower-valued lots around Georgetown lake from Jericho Bay, and Pintlar Vista (Deer Lodge County) neighborhoods,
- v. 5 – Initial letter of appeal from Finks to MTAB dated May 2, 2016 requesting MTAB to consider influence on value from access road between Fink’s home and garage,

b. DOR exhibits;

- i. A – Comparable Sales Report for tax year 2015 listing the five comparable sales used to value the subject property,
- ii. B – Fink appeal map showing the location of the subject and six comparable sales including sales dates, acreages, and sale prices,
- iii. C – Land Valuation Model for neighborhoods 2.D and 2.C, Badger Bay Frontage neighborhood,
- iv. D – Four-page DOR Property Record Card for the subject, printed on 8/3/2016, listing the history, characteristics and methods of valuing the subject.

- 11. Taxpayers alleged that neither the DOR nor the CTAB fully considered the negative influence of an easement to the neighboring lot which runs

BEFORE THE MONTANA TAX APPEAL BOARD

William and Judy Fink v. DOR

between Taxpayers' home and garage, limiting their privacy and enjoyment of their property.

12. DOR argues that the CTAB reduced the land value "to account for a road that passes through the Subject Property." (DOR Final Submission, p. 3.) However, the CTAB decision was silent as to the easement issue. Instead, the CTAB reduced the land value because they agreed with the Fink's that the DOR's formula which calculates diminishing marginal utility was not reasonable as applied because it compared the Fink's 0.79-acre lot to comparable sales of 1-3 acre lots. (CTAB decision, April 6, 2016.)
13. Taxpayers submitted exhibits from the cadastral property information system that shows other similarly sized lots (less than 1 acre) around Georgetown lake with lower DOR values than the subject land.
14. Taxpayers presented evidence that if all the lots around Georgetown lake were appraised as part of the same neighborhood, the average value of lake lots would be considerably lower than the value assigned to their land.
15. DOR's evidence showed that the distinct neighborhoods were established and valued by the DOR based on their amenities.
16. The comparables used by DOR included sales from the Badger Bay neighborhood, the most desirable area on Georgetown Lake.

BEFORE THE MONTANA TAX APPEAL BOARD

William and Judy Fink v. DOR

17. DOR provided maps to show the subject land is very near to other desirable Badger Bay properties. The comparable sales used by DOR were from near-by lots to the subject and sold at the highest prices in the area.
18. DOR's appraiser provided testimony in the CTAB hearing that comparable lots identified by the Taxpayer had inferior amenities or access as compared to the subject; for example, shallow water for boat navigation or poor views of the nearby mountain ranges.

CONCLUSIONS OF LAW

19. 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

20. 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).
21. 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.

BEFORE THE MONTANA TAX APPEAL BOARD

William and Judy Fink v. DOR

Assessment

22. “All taxable property must be appraised at 100% of its market value....”
Mont. Code Ann. § 15-8-111.
23. “[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.
24. 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)).

BEFORE THE MONTANA TAX APPEAL BOARD

William and Judy Fink v. DOR

Neighborhood

25. We find DOR used a consistent method, a comparable sales approach, that compared sales of lots with similar characteristics and sales in the neighborhood close to the subject to find the value of the Finks property.
26. We find that the Finks' argument for a discount due to an easement that runs between their home and garage has merit as the market would demand a discount for the reduced privacy associated with this road.
27. Nowhere in the record do we find any response by the DOR to refute the Finks' argument for a reduction due to the easement.
28. None of the comparables used by the DOR to value the subject show an easement running through the middle of the home site.
29. Therefore, the Board must agree with the Taxpayers that without any consideration for the easement the DOR has overvalued their land.

BEFORE THE MONTANA TAX APPEAL BOARD

William and Judy Fink v. DOR

ORDER

30. William and Judy Fink's appeal and complaint is **granted in part**.
31. DOR is **ordered** to reduce the value of the land to \$310,000, as these changes relate to the property at 14 Rest Haven Lane, Anaconda; geocode 46-1374-13-1-01-13-0000; legal description Piney Point Tracts, S13, T05 N, R14 W, Lot 13A, Acres 0.79.

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).

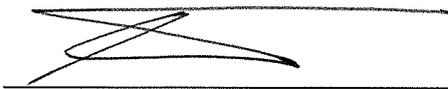
Ordered January 27, 2017.



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



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



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

BEFORE THE MONTANA TAX APPEAL BOARD

William and Judy Fink v. DOR

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 January 27, 2017 to:

William and Judy Fink
14 Rest Haven Lane
Anaconda, MT 59711-9279

Michele Crepeau
Montana Department of Revenue
Legal Services Office
P.O. Box 7701
Helena, MT 59604-7701

Granite County Tax Appeal Board
P.O. Box 396
Drummond, MT 59832

Property Assessment Division
Department of Revenue
P.O. Box 8018
Helena, MT 59604-8018



Lynn Cochran, Administrative Officer
MONTANA TAX APPEAL BOARD