

JUN 08 2020

Montana Tax Appeal Board

DONNA OERTLI,

Appellant,

v.

**STATE OF MONTANA,
DEPARTMENT OF REVENUE,**

Respondent.

CASE No: PT-2019-32

**FINDINGS OF FACT,
CONCLUSIONS OF LAW, ORDER
AND OPPORTUNITY FOR
JUDICIAL REVIEW**

STATEMENT OF THE CASE

Ms. Donna Oertli is appealing the valuation of her undeveloped, non-waterfront parcel of land, which she believes should be valued lower than similar parcels in her neighborhood which have frontage on the Bitterroot River. Ms. Oertli is making a claim that her lot should not be valued the same as dissimilar lots on the waterfront, when her lot is non-waterfront property.

ISSUE TO BE DECIDED

Whether the Department of Revenue's (Department) valuation method failed to account for a waterfront influence factor in valuing properties in this neighborhood, causing Ms. Oertli's property to have a higher value than it would have if the influence was applied.

PROPERTY DESCRIPTION

The subject property in this appeal is a 1.17-acre lot of undeveloped land, located southwest of Missoula in the Miller Creek area. *Dept. Ex. B.* The lot is in the Rodeo Ranchettes Phase 2 subdivision, and is identified by Geocode 04-2092-25-1-05-03-0000.

Id. The address is 10820 Oral Zumwalt Way, Missoula. *Id.* The legal description is Rodeo Ranchettes #2, S25, T12 N, R20 W, Block 3, Lot 3. *Id.*

EXHIBIT LIST

The Board admitted the following exhibits submitted by Ms. Oertli:

1. Document created by Ms. Oertli titled *Non-waterfront vs Waterfront*, showing the value of a non-waterfront property and the value of a waterfront property, including two photographs;
2. Document compiled by Ms. Oertli titled *Rodeo Ranchettes Phase 1 and Phase 2*, showing the land tracts for the two separate phases of the property development;
3. Document created by Ms. Oertli titled *Land Model Sales Information (Excerpt from Exhibit D, Missoula Co. Land Board Meeting)*;
4. Document created by the Department titled *Land Sales Comparison (Exhibit E, Missoula Co. Land Board Meeting)*, with Ms. Oertli's handwritten notes showing the waterfront property, and land assessments in 2018 and 2019;
5. Document created by the Department titled *Land Sales Comparison Map (Exhibit E-1 Missoula Co. Land Board Meeting)*, with highlights showing the subject property and comparable sales;
6. Document created by Ms. Oertli titled *Neighborhood 204.016.3*, showing a topographical view of the area around the subject property;
7. Document compiled by Ms. Oertli titled *Similar Missoula Co. Waterfront and Non-waterfront subdivisions*, showing the Lena Lane and Kelly Island fishing access area, and the accompanying assessments per acre;
8. Document titled *Hughes Court – Land Assessment Values*, showing properties in Oral Zumwalt and Hughes Court, and the accompanying assessments for years 2015, 2017 and 2019;
9. Untitled document created by Ms. Oertli, showing a waterfront and a non-waterfront property listing and value;

10. Document created by Ms. Oertli titled *The Math*, showing calculations for Phase 1 and Phase 2 for tax years 2015, 2017 and 2019;

11. Document created by Ms. Oertli and presented at the MTAB hearing titled *Outline for Property Owner Presentation*, showing different property appraisals and statutory material:

a. Document created by Ms. Oertli titled *Discovery Documents*, involving a narrative of the land sales comparisons found in the Department's exhibits E and E-1;

b. Document created by the Department titled *Land Sales Comparison (Exhibit E, Missoula Co. Land Board Meeting)*, with Ms. Oertli's handwritten notes showing the waterfront property, and land assessments in 2018 and 2019;

c. Document created by the Department titled *Land Sales Comparison Map (Exhibit E-1 Missoula Co. Land Board Meeting)*, with highlights showing the subject property and comparable sales;

12. Missoula County Tax Appeal Board meeting transcript and decision;

13. Exhibits from the Department's Missoula County Assessment division received at the Missoula County Tax Appeal Board hearing;

14. Discovery documents received from the Department of Revenue;

15. Information provided with the MTAB-801 form.

The Board admitted the following exhibits submitted by the Department:

A. *Request for Informal Classification and Appraisal (AB-26)*, for Ms. Oertli's lot, marked received July 10, 2019;

A1. *Form AB-26 Determination Letter* to Ms. Oertli, issued by the Department on August 15, 2019. The letter declined to make any value adjustment to the subject property, relying on "Sales of comparable property" as a rationale;

B. Subject *2019 Property Record Card*, with a run date of October 21, 2019;

C. Aerial photograph of the Rodeo Ranchettes neighborhood dated October 18, 2019 showing Ms. Oertli's property, comparable properties and the county-owned land;

D. Document created by the Department titled *Land Model Sales Information*, listing the comparable sales used in developing the model for valuing Ms. Oertli's neighborhood. Nine sales from the 16.3 neighborhood were listed, including sale dates and a column indicating the adjusted sale price. The adjustment was from the actual sale date adjusted in time to the common lien date of January 1, 2018. Under the model descriptor, both the Rodeo Ranchettes Neighborhood 16.2 and South Miller Creek Neighborhood 16.3 are listed, but the nine sales listed are all located in the latter. Presumably, the Rodeo Ranchette neighborhood was listed only to show that there were no valid sales from the Rodeo Ranchette neighborhood prior to the lien date;

E. Document created by the Department titled *Land Sales Comparison*, showing three comparable sales near the subject in 2015, and three sales after the January 1, 2018 lien date in the Rodeo Ranchette and Rodeo Way subdivisions;

E1. Document created by the Department, with highlights showing the subject property and comparable sales, and handwritten notes connecting the highlighted properties to the list of properties in exhibit E. The value of the 2015 waterfront sale captioned as Comp #1 (10203 Oral Zumwalt Way) lists a sale price, after adjustment for size, of \$3.67 per square foot, as compared to the subject property's value of \$2.54. Listed among the post lien-date comparison sales is a waterfront sale on June 8, 2018 (six months after the lien date) of \$3.54 per square foot, as compared to the subject equivalent value of \$2.54 per square foot. While the two sales comparisons are not marked as waterfront, the record and testimony from Ms. Oertli indicates both are waterfront lots near the subject.

F. Document created by the Department titled *2019 Tax Assessment for 10820 Oral Zumwalt Way, Missoula County*, used by Ms. Oertli during her CTAB appeal, dated October 24, 2019;

F1. Aerial photograph showing property values in Lena Lane;

F2. Aerial photograph showing property values in Edward Court;

F3. Ms. Oertli's CTAB appeal form, marked received September 12, 2019.

G. Missoula County Tax Appeal Board decision denying Ms. Oertli's appeal, dated November 1, 2019. Within the Missoula CTAB opinion the County Board included this statement: "The comparative sales information supports Ms. Oertli's contention that waterfront property is worth more than non-waterfront property." The decision went on to find the subject property was valued appropriately when compared to other non-waterfront property in the South Miller Creek neighborhood, but the Board determined the inequity with the waterfront property "should be addressed directly to the Department of Revenue";

H. Five 2015 Property Record Cards, provided in response to Ms. Oertli's information request, run date February 6, 2020. The 2015 property record cards include the subject property, which does not show an entry under the heading "Infl Cds"; a waterfront lot at lot 9 Rodeo Ranchettes Phase 1 on the river, which included a Waterfront influence; a waterfront lot directly across the river on Hughes Court with a higher waterfront value of \$159,400; a non-waterfront lot in a neighborhood on Ancabide Lane neighborhood 16.3, valued at \$93,000 and finally another non-waterfront lot in neighborhood 16.3 on Brushpopper Lane, valued at \$93,777;

I. Orion 2015 screen shot, showing lot 9 in Phase 1 with a waterfront influence and valued at \$161,600, web file generation date April 15, 2015. The same lot in the present valuation cycle without a water influence applied was valued at \$129,616;

J. Document created by the Department titled *Land Valuation Model* (three versions of this exhibit were filed with the Board, including the final version which was submitted during the MTAB hearing). Within one of the versions of Exhibit J, two of the nine sales indicated that an influence factor of V1 was applied. None of the sales in any of the three Exhibit J documents indicated any water influence factors applied for being located on a river or stream, as is typically denoted by a "W". The two latest versions of Exhibit J indicate they include Rodeo Ranchettes Neighborhood Residential 16.2 and 16.3 South

Miller Creek Residential. However, all nine sales used in this exhibit are from neighborhood 16.3.

K. Department created topographical map of 10820 Oral Zumwalt Way, the document points out the subject property, and as examples: Hughes Court, Lena Lane and Edward Court. The document shows the subject neighborhood is not located near the neighborhoods/subdivisions referenced by the taxpayer, where waterfront lots were valued substantially higher than non-waterfront lots. The general description of the subject neighborhood 16.3 is South Miller Creek Residential. A map of neighborhood 16 was not offered into evidence, so the Board does not know what boundaries are defined by the neighborhood.

FINDINGS OF FACT

1. Phase 1 of the Rodeo Ranchettes subdivision is comprised of waterfront lots on the Bitterroot River. *MTAB Hrg. 9:24-9:30*. Across the street are the Phase 2 lots, none of which have frontage on the river. *Id.* Ms. Oertli's property is in the Phase 2 section. *Id.*

2. Ms. Oertli filed a Request for Informal Classification and Appraisal Review (AB-26) with the Department on July 10, 2019. *Dept. Ex. A*. The Department investigated, and on August 15th sent Ms. Oertli a Form AB-26 Determination Letter. *Dept. Ex. A-1*. The letter declined to make any value adjustment to Ms. Oertli's property, relying on "Sales of comparable property" as a rationale. *Id.* Under additional notes the Department stated "...the other sale at 10150 Oral Zumwalt sold for \$255,000 in 2015". *Id.* The Department did not offer testimony at the MTAB hearing as to why the comparable sale included a sale of a property in which the value of the land was not extracted from the total sale price to show a comparable value of land to land. *MTAB Hrg.* Nor, did the Department explain why a three-year-old sale was indicative of a value for the subject property on January 1, 2018. *Id.* The Department also failed to consider the significant

difference in lot size, as the lot for the comparable sale was 1.98 acres, a difference of .81 acres larger than the subject lot. *Montana Cadastral*.

3. Ms. Oertli filed her property tax appeal with the Missoula County Tax Appeal Board on September 12, 2019. *MTAB File 3*. She testified that prior to 2017, the Department valued waterfront lots in her neighborhood at a higher amount than similar non-waterfront lots. *MTAB Hrg. 11.32-12.10*. Ms. Oertli presented evidence that since 2017 the Department's approach to valuation changed, and the Department ceased making adjustments to the waterfront lots in the Rodeo Ranchettes Phase 1 subdivision to reflect a higher value for the lots with frontage on the river. *Id.*

4. During the CTAB hearing the Department's witness, Appraiser Brad Long, testified that the county allowed river access across a county lot on the riverfront in the subdivision. *CTAB Hrg. p.12:15-25 and p.13:1-22*. "... we're saying it helps everyone's values here because you've got easy access. You[] don't have to drive a long way to access the river because the county has their land there and it's boat access." *Id.* at 12:22-24. The Department did not repeat this statement at the MTAB hearing. *MTAB Hrg.*

5. During the MTAB hearing Ms. Oertli provided credible examples of riverfront lots in similar nearby neighborhoods, Edward Court and Lena Lane, which were valued significantly higher than non-waterfront lots. *Dept. Ex. F1 and F2*. The Department stated under questioning by the Board, the property in these neighborhoods are indicated via influence factor to distinguish the waterfront locations. *MTAB Hrg. 1.24.56-1.25.12*.

6. When the Department was confronted with the evidence submitted by Ms. Oertli at the MTAB hearing concerning the other neighborhoods, which did have a higher value placed on waterfront lots, the Department did not explain or provide any legal authority for the difference. *MTAB Hrg.*

7. Ms. Oertli presented to the Board credible evidence and testimony showing that her land value was not equalized with the values of her neighbors, due to the failure of the Department to take the waterfront influence into account. *MTAB Hrg.* Ms. Oertli argued that a valid property appraisal method ought to account for the rare commodity of lots on the river, and such lots should be worth more in the market than lots off the river. *Id.*

8. The Department Area Manager Michelle Staples testified that without a sale in the Phase 1 section of the subdivision, she added the nineteen waterfront lots into the broader 16.3 neighborhood. *MTAB Hrg. 1.23.26-1.24.24.* Ms. Staples stated she could not factor in a waterfront influence without a sale to validate the value. *Id. at 1.27.28-1.28.58.* When asked by the Board for the authority which allowed the Department to disregard a waterfront influence without a sale to validate, Ms. Staples was unable to cite to any specific source. *Id. at 1.48.16-1.49.09.*

9. Finally, Ms. Oertli presented evidence from sales in 2015, and in the months after the January 1, 2018 lien date, to support her argument that actual market sales proved waterfront sale prices were higher than similar non-waterfront sale prices. *Oertli Exhibits.*

JURISDICTION AND STANDARD OF REVIEW

10. The Board has jurisdiction over this appeal, and its order is final and binding upon all parties unless altered upon judicial review. *MCA §15-2-301.*

11. In reviewing this appeal, "... the state board is not bound by common law and statutory rules of evidence or rules of discovery and may affirm, reverse, or modify any decision. To the extent that this section is in conflict with the Montana Administrative Procedure Act, this section supersedes that act." *MCA §15-2-301(5).*

12. The Board hears County Board appeals de novo. *CHS Inc. v. DOR, 2013 MT 100*. “A trial de novo means trying the matter anew, the same as if it had not been heard before and as if no decision had been previously rendered.” *McDunn v. Arnold, 2013 MT 138*.

CONCLUSIONS OF LAW

13. The goal of property appraisal is to arrive at a fair market value. *MCA §15-8-111*. This means all property is appraised at 100% of market value. *Id.* 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... .” *Id at (2)(a)*. In establishing a correct classification and value, the Department is mandated to “...use information available from any source considered reliable.” *Id at (3)*.

14. The taxpayer bears the burden of proving the error of the Department’s appraisal. *Western Air Lines, Inc. v. Michunovich, 149 Mont. 347, 353, 428 P.2d 3, 7 (1967)*. However, the Department cannot rely entirely on the presumption in its favor and must present a modicum of evidence showing the propriety of their action. *Id at 353*.

1. Valuation (Cost) and Influence Factors

15. The Department credibly argued that Ms. Oertli’s property was valued consistently with similar non-waterfront lots in the greater area. *MTAB Hrg.* However, they failed to explain why the market value of non-waterfront and waterfront lots were averaged to be valued in an identical manner, when it seems an obvious presumption that the market value for these two distinct types of property is not the same. The rationale given by the Department during the hearing is that without a recent sale of a waterfront property in Ms. Oertli’s immediate neighborhood, no consideration could be made. *Id. at 1.27.28-1.28.58*. When asked for the legal or administrative underpinning to justify that decision, no answer was tendered. *Id. at 1.48.16-1.49.09*. We are not persuaded by these answers.

16. While the Board does understand the CTAB's concern that they are unable to adjust the value of Ms. Oertli's neighbors' lots, the CTAB did acknowledge that Ms. Oertli had met her burden of proof, and that the methods used by the Department led to an unfair result. This Board finds that if there is any reason for a tax appeal process, it is to recognize and correct unfair values being applied. Ms. Oertli appealed her valuation, and spent countless hours researching values to meet her burden of proof to overcome the presumption that the Department is correct. This is exactly what the Montana Constitution contemplates for a tax appeal process. The record is replete with evidence that through the AB-26 informal review process, Ms. Oertli attempted to convince the Department she was unfairly valued, without any result. As such, she properly exercised her right to ask this Board to correct the injustice.

2. Waterfront

17. The Department failed to explain why, when its appraisers had accounted for a higher value for waterfront lots in other Missoula locations, they failed to do so in the Rodeo Ranchettes Subdivision.

18. This Board declines to dictate to the Department how to improve its methods to show taxpayers that waterfront lots are worth more than non-waterfront lots. Perhaps that effort may be accomplished by defining and valuing all waterfront lots in a regional neighborhood, as they seem to do on Lena Lane and Edward Court. Conversely, it may be accomplished case by case, by applying a waterfront influence when one is present, as Ms. Oertli has proven in this case. But, we do find that the Department must take waterfront location, and the fact that it is a rare and therefore more valuable commodity, into account in a way that saves taxpayers like Ms. Oertli from having to make her arguments again in two years.

3. Equalization of Values

19. “The state shall appraise, assess, and equalize the valuation of all property which is to be taxed in the manner provided by law.” *Montana Constitution, Article VIII, section 3.*

20. “The department shall adjust and equalize the valuation of taxable property among the several counties, between the different classes of taxable property in any county and in the several counties, and between individual taxpayers and shall do all things necessary to secure a fair, just, and equitable valuation of all taxable property among counties, between the different classes of property, and between individual taxpayers.” *MCA §15-9-101.*

21. “The method of appraisal and assessment provided for in 15-7-111 must be used in each county of the state so that comparable properties with similar full market values and subject to taxation in Montana have substantially equal taxable values in the tax year... .” *MCA §15-7-112.*

22. “The combined effect of these provisions (*Montana Constitution, Article VIII, section 3, MCA §15-9-101 and MCA §15-7-112*) requires standardized appraisal methods throughout the state with the ultimate goal that the valuation of taxable property be equalized among the various counties in the state and among individual taxpayers, and that once equalized, that property be assessed for tax purposes at 100% of its market value, except as otherwise provided.” *Roosevelt v. Montana Dept. of Revenue, 1999 MT 30, 23, 293 Mont. 240, 975 P.2d 295 [information in brackets added].*

23. The Montana Constitution and affiliated statutes require the Department to use “standardized appraisal methods” to “equalize” property valuation. *Id.* Ms. Oertli contends that her non-waterfront property should not be valued the same as property

located on the waterfront, as the two types of property are not the same. Ms. Oertli bears the burden to prove the Department made an error when they assessed her non-waterfront property the same as the waterfront property across the street. *Western Air Lines, Inc. v. Michunovich*, 149 Mont. 347, 353, 428 P.2d 3, 7 (1967). Ms. Oertli accomplished this through her credible testimony, and the substantial evidence she submitted at the CTAB and MTAB hearings.

24. The Department bears the responsibility of appraising all property at its fair market value. *MCA §15-8-111*. Ms. Oertli should not be penalized due to the lack of a sale to validate market value. An influence factor either exists or does not exist under the Department's policies and procedures. As shown by Ms. Oertli, other neighborhoods in the area are appraised with a waterfront influence factor applied. As such, the same must be utilized to fulfill the statutorily mandated duty to equalize.

4. Current Appraisal Cycle

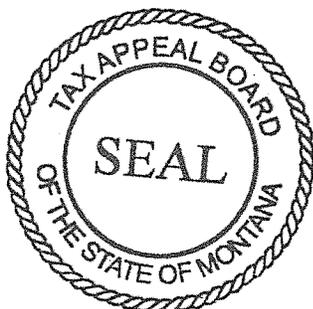
25. Ms. Oertli is concerned with the duration of the Department's property valuation discrepancy and has asked the Board to look back to the number of cycles she may have overpaid for her assessment. *MTAB Hrg. 13.12-13.53*. This Board's jurisdiction is limited to hearing and adjudicating matters in the current tax cycle. *MCA §15-2-306*. As such, the Board concludes the matter of a previous tax cycle is beyond our jurisdiction. *Id.* The Board only maintains statutory authority to accept, deny or adjust property valuations, and other refunds for taxes paid under protest, for the current property tax cycle, in this case for 2019-2020. *Id.* Consideration of past tax cycle refunds is under the purview of the Board of County Commissioners. *MCA §15-16-603*.

ORDER

IT IS THEREFORE ORDERED by the Montana Tax Appeal Board:

Ms. Oertli met her burden to show her lot was overvalued, and as such we direct the Department to value Ms. Oertli's lot at the amount requested in her last written request to this Board, which was \$100,795 for the 2019/2020 valuation cycle. We decline to adjust the value for the 2017/2018 valuation cycle as this Board only maintains the authority to adjust the current property tax cycle.

Ordered June 8, 2020



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

Steve Doherty by Dean
Steve Doherty, Board Member
MONTANA TAX APPEAL BOARD

Eric Stern
Eric Stern, Board Member
MONTANA TAX APPEAL BOARD

Notice: You are entitled to judicial review of this Order by filing a petition in district court within 60 days of the service of this Order. The Department of Revenue shall promptly notify this Board of any judicial review to facilitate the timely transmission of the record to the reviewing court. MCA §15-2-303(2).

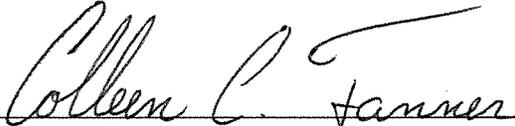
Certificate of Service

I certify that I caused a true and correct copy of the foregoing Order to be sent by United States Mail via Print and Mail Services Bureau of the State of Montana on June 8, 2020 to:

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Colleen C. Tanner, Law Clerk
MONTANA TAX APPEAL BOARD