

OCT 23 2020

Montana Tax Appeal Board

McLEOD FAMILY TRUST,

Appellant,

v.

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

Respondent.

CASE №: PT-2020-15

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

STATEMENT OF THE CASE

This tax appeal concerns a lakefront property located on the Rainbow Point peninsula on Georgetown Lake near Anaconda, Montana. The property contains a home, but only the value of the land is being appealed. The Taxpayer is the McLeod Family Trust. The Montana Department of Revenue appraised the land for the 2019/2020 appraisal cycle, at a value of \$335,820. Jack McLeod, a trustee, appeared before this Board for hearing on July 28, 2020. His son Jim McLeod assisted him. The Mcleods believe the land is worth \$180,641. Mcleods appealed to the Deer Lodge County Tax Appeals Board but were denied his request for the reduction in value. McLeod's are appealing that decision. We uphold the Department's valuation.

ISSUE PRESENTED

The issue presented to this Board is whether Mcleods' evidence and testimony overcame the presumption that the Department of Revenue's mass appraisal system has produced a land value that accurately reflects fair market value for 2019/2020.

PROPERTY DESCRIPTION

The .572-acre parcel of land under review is identified as Geocode 30-1375-07-3-02-14-0000. The physical address is 714 Black Bear Lane, Anaconda, MT, 59711. The Legal Description is Rainbow Estates #2, S07, T05 N, R13 W, Lot D, 0.572, on Plat 191A in Deer Lodge County. The property is located in DOR's model neighborhood coded 230.013.L. Factors listed on the DOR Property Record Card describe the subject topography as having rolling hills, containing a well and septic system at the site, and having access by a dirt road and a residential lane to the north of the property, with the home fronting Georgetown Lake. Testimony indicated 300 front feet of shoreline.

APPEAL HISTORY

The McLeods appealed this property for the 2017/2018 appraisal cycle and were successful at the County Board level in a reduction of value for the land. The DOR did not appeal that determination to MTAB. That adjusted 2017/2018 value of \$180,641 for the land was not considered by the DOR when they recalculated market value for the 2019/2020 valuation cycle. In 2019, McLeod filed a request for informal review of his land and improvement values. DOR did make a substantial reduction in the value of the improvements from \$295,080 to \$240,140 but declined to reduce the land value, so McLeod exercised his right of appeal to the County Tax Appeal Board to contest the land value.

EXHIBIT LISTS

The Board admitted the following exhibits submitted by the Taxpayer:

Ex. 1: A cover letter, the county assessment and CTAB appeal documents including the decision;

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Ex. 1 1/2: Property photo with title labeled Assessment #1 and Assessment #2 along with Property Record Cards and a fact sheet of comparisons;

Ex. 2: Property photo with title labeled Assessment #3 with PRC and a fact sheet of comparisons;

Ex. 3: Property photo with title labeled Assessment #4 with PRC and fact sheet of comparisons;

Ex. 4: Property photo with title labeled Assessment #5 with PRC and fact sheet of comparisons;

Ex. 5: Property photo with title labeled Assessment #6 and #7 with PRC's and fact sheets of comparisons;

Ex. 6: Property photo with title labeled Assessment #8 with PRC and fact sheet of comparisons;

Ex. 7: Property photo with title labeled Assessment #9 with PRC and fact sheet of comparisons;

Ex. 8: Property photo with title labeled assessment #10 with PRC and Equitable Comparison of Georgetown Lake Assessments;

Ex. 9: Literski & Charlton 2009 Factual Background, Conclusions of Law and Opportunity for Judicial Review; and

Ex. 10: Subject Property photo with DOR Property Record Card (PRC);

The Board admitted the following Exhibits submitted by the Dept. of Revenue:

Ex. A: CTAB appeal including DOR Request for Informal Review (AB26) form, AB26 final determination letter, and revised assessment notice reflecting reduction in improvement value and reasoning for no change in land value;

Ex. B: Georgetown Lake contour map;

Ex. C: Excerpt from the DOR's 2019-2020 Montana Residential, Commercial and Industrial Property Classification and Valuation Manual;

- Ex. D: Maps indicating subject property and comparable properties;
- Ex. E: Various recent sales;
- Ex. F: CTAB presentation and graphs, including reasoning for mythology;
- Ex. G: Property Record Card;
- Ex. H: Photos of Georgetown Lake area;
- Ex. I: DOR Land Model;
- Ex. J: Property listings; and
- Ex. K: Second DOR Land Model.

FINDINGS OF FACT

1. The Department calculates land value by considering sales of vacant land, and improved sales through the method of extraction of improvement value. *Dept Ex. C*. These land sales yield a mass appraisal modeling database which is known as Computer Assisted Land Pricing (CALP). The DOR uses this database with various adjustments to estimate land values by neighborhood, of all property statewide. These methods are understood to be mass appraisal, not to be confused with fee appraisal or appraisal of individual tracts by a licensed appraiser. Mass appraisal is used because it would be impractical to individually appraise every property in Montana every two years. This method has historically been found to yield reliable land values and is used nationwide.

2. The Department uses recognized mass appraisal methodology in assessing the first acre, or “base acre,” as the most valuable, with each additional acre of land having a progressively lower value. *MTAB Hrg. Transcr. 45:21-46:4*. This “base acre” method is standard throughout the appraisal industry. *IAAO Property Assessment Valuation Manual, Third Edition 2010, Pg. 188*.

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3. Mr. McLeod believes the DOR formula is inaccurate and advocates a constant price per square foot or straight-line acreage formula, whereby similar properties that have recently been sold, though of differing sizes, may be compared by simply dividing the number of square feet or acres by the sales price. *MTAB Hrg. Transcr. 45:21-46:4, Taxpayer Ex. 1½-8.*

4. Mr. McLeod produced records of sales of larger parcels in his neighborhood and from comparable neighborhoods surrounding Georgetown Lake, which, using his formula of sf/acre divided by sales price, with no reduction per sf/acre for each additional unit, yielded an average price per square foot that was significantly lower than his own. *Taxpayer Ex. 1½-8.* This average, when applied to his land size, made it seem relatively more expensive compared to his comparable.

5. When building the multiplicative model, the DOR stratifies the valid land sales into neighborhoods with similar highest and best use, locations, and market conditions. *Dept. Ex. C, Montana Residential, Commercial, and Industrial Property Classification and Valuation Manual 2019-2020, Pg. 7.* Units of comparison, such as square feet, acreage, and front feet, are determined for each market area. *Id.* Base size is specified for parcels in each market area for the valuation analysis; when the subject land size is compared to the base land size, a ratio is determined and used in the model. *Id.* The model will consider this the base acre or base lot, and it may consist of an actual or hypothetical subject lot, but the value is later adjusted upward or downward in value to account for whether the subject lot is larger or smaller than the base size. This adjustment is for residual equalization and is also a commonly applied mass appraisal technique. *Id.* A 1-acre base lot was determined for the subject neighborhood.

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6. The International Association of Assessing Officers (IAAO) standard for an acceptable median assessment ratio is between .90 and 1.10. *Id.* The DOR's multiplicative regression model calculated a median value of .97 for the subject property which is within the acceptable range using reliable IAAO standards. *Dept. Ex. F.* This test and resulting value validate the accuracy of the land value model used by the DOR in this assessment.

7. Sales were also reviewed for influences that were different from the typical lot and appear to impact value, such as location, view, or water frontage. *Id.* DOR witness Tierani Losing, the Department's modeler, testified that she applies one of three "water influence factors" for lakefront properties on Georgetown Lake. *MTAB Hrg. Transcr. 52:21-52:12, 62:6.* These factors, when applied, increase the value of land in the model because it stands to reason that lakefront land is more desirable in the market than non-lakefront land. The influence factors for lakefront, based on observations of characteristics of recent sales, were: 1) superior quality of lake frontage with deeper water allowing shorter docks better boat access being most desirable, 2) whether land has useable lake frontage but is backed by nearby Montana Highway 1 that decreases privacy and is less appealing to buyers, and 3) lake frontage with shallow and/or marshy depth making recreation such as swimming and boating more difficult, the least desirable lake frontage influence factor. The McLeod land was given a superior influence factor. *Id.* She assigned the McLeod land and seven other similar land sales nearby the superior influence due to their desirable frontage and locations. Losing testified that the subject was similar in quality to the other superior location sales.

JURISDICTION AND STANDARD OF REVIEW

8. The Taxpayers filed a timely appeal of the DCTAB decision to the MTAB. Therefore, this Board maintains jurisdiction to hear and decide this matter. Mont. Code Ann. §15-2-301(1)(b).
9. This Board hears CTAB appeals de novo. *CHS Inc. v DOR*, 2013 MT 100, 299 P.3d 813 (2013). “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, 303 P.3d 1279 (2013). As such, this matter will be reviewed without merit to the DCTAB hearing and subsequent decision. *Id.*
10. The Board must determine, based on a preponderance of the evidence, whether the Department of Revenue accurately valued Mr. McLeod’s property for tax year 2019, and whether the Department of Revenue properly valued the property.
11. As a rule, the Department’s appraisals are presumed to be correct and the Taxpayer must overcome this presumption, but the Department of Revenue also bears a minimum burden of providing documented evidence to support its assessed values. *Farmers Union Cent. Exch. v. Department of Revenue*, 272 Mont. 471, 901 P.2d 561, 564 (1995); *Western Airlines, Inc., v. Michunovich*, 149 Mont. 347, 353, 428 P. 2d 3, 7, cert. denied 389 U.S. 952, 19 L. Ed. 2d 363, 88 S. Ct. 336 (1967).

BOARD DISCUSSION AND CONCLUSIONS OF LAW

12. Under Montana law, all taxable property must be assessed at 100 percent of its market value except as otherwise provided. Mont. Code Ann. §15-8-111(1), market value being 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

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sell and both having reasonable knowledge of relevant facts. Mont. Code Ann. §15-8-111(2)(a). The Department is authorized to use one or more approaches to value residential property, including the comparable sales or market data approach. *Albright v. State*, 281 Mont. 196, 208-09, 933 P.2d 815, 823 (1997).

13. The sales Comparison Approach used to value the subject property is one of the three traditional approaches to find market value by which an indication of the value of a property is arrived at by compiling data on recently sold properties which are comparable to the subject property and adjusting their selling prices to account for variations in time, location, and property characteristics between the comparable sales and the subject property. *MTAB Hrg Transcr. 46:17, Dept Ex. C.*

14. In challenging the Department's assessment, Mr. McLeod uses his own methodology for estimating the value of comparable sales of properties, but that methodology is not recognized under the uniform standards of appraisal theory. All other things being equal, larger properties will generally have a lower per sf/acre value than smaller properties. *Dept. Ex. F.* As the Department's modeler remarked in Exhibit F; the land is like coffee – the more you order, the less per ounce you are charged. Economists and appraisers have long accepted such economies of scale principles in property appraisal. *Id.* Had Mr. McLeod's comparable properties taken the economies of scale into account or found an identically sized, similar in nature and situated property, his analysis might have been given more credibility. The DOR witness testified credibly that taxpayer's alternative method skews actual market values and decreases equalization of value required by Montana law. Mont. Code Ann. § 15-9-101(1). If the DOR were to adopt Mr. McLeod's method of valuation, owners of larger parcels would be valued relatively lower than their neighbors with smaller lots.

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15. There is also the issue of water frontage. As part of the DOR's mass appraisal system, the DOR uses a CALP model using fifty-two land sales in this case. *MTAB Hrg. Transcr. 49:11*. The DOR applies a size adjustment using the independent variables in its model from the sample of land sales. *Id.* This adjustment results in smaller lots located closer to the lake being valued at a higher per-square-foot value than larger lots in the subject neighborhood. The lots are then adjusted from date of sale to the common statewide lien date of 1/1/2018 to equalize sale values in time.

16. When applying Mr. McLeod's method of dividing the sale price by the square feet of a parcel, a wide range of prices are produced that we find do not represent the market in the Georgetown Lake neighborhood. *Dept. Ex. F, Taxpayer Ex. 1½-8*. A wide range of prices per acre would indicate that buyers in this market are more concerned with the number of acres they are purchasing and less concerned with lake access and quality of waterfront. We find the opposite is true. Badger Bay and Rainbow Point are very attractive to buyers in this market because of the lake frontage and access to the deeper parts of the lake. *Dept. Ex B, Taxpayer Ex. 2*. Furthermore, the comparable properties used by the Taxpayer were not time trended for the appraisal date and were all larger than an acre.

17. Because of testimony and evidence of sale prices presented at the hearing, we find buyers are highly sensitive to the quality of lakefront and lake access in this market. Mr. McLeod offered little testimony to refute this evidence, and the Board finds Mr. McLeod's method of valuing property to be less credible. The DOR not only used accepted IAAO appraisal methods but also accounted for economies of scale and the theory of diminishing returns.

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18. The Board cannot, on the evidence submitted, find any significant or fatal flaws in the DOR's methodology and resulting value. The DOR followed its rules and complied with all applicable appraisal standards, according to Mont. Code Ann. § 37-54-403. The DOR's comparable properties were similar and further adjusted within the acceptable median assessment ratio set by IAAO. While the three influence factors applied to lakefront properties in the neighborhood seemed narrow among the litany of the factors considered by an informed buyer of lakefront property, the alternative was not convincing. The Taxpayer did not meet his burden of proving an error in the DOR's appraisal. The DOR's appraised value of this tax cycle of \$335,820 is affirmed.

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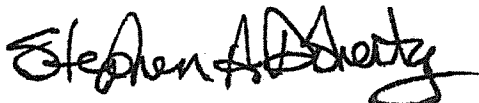
ORDER

The Anaconda-Deer Lodge County Tax Appeal Board's decision, setting the value of the subject property land at \$335,820 for this cycle, is affirmed. The Taxpayer's appeal is denied.

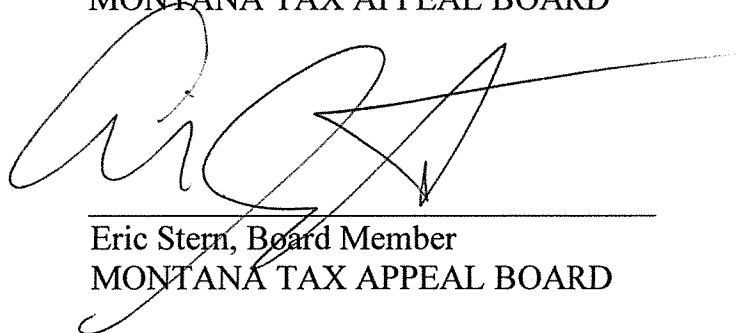
Ordered October 23, 2020.



David L. McAlpin, Chairman
MONTANA TAX APPEAL BOARD



Steve Doherty, Board Member
MONTANA TAX APPEAL BOARD



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 Final Decision to be sent by United States Mail via Print and Mail Services Bureau of the State of Montana on October 23, 2020 to:

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Butte, MT 59701

Brendan Beatty
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Lynn Cochran, Legal Secretary
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