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MAY 1 2015

**MONTANA DEPT. OF REVENUE
 OFFICE OF LEGAL AFFAIRS**

**ELEVENTH JUDICIAL DISTRICT COURT
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ELEVENTH JUDICIAL DISTRICT COURT, FLATHEAD COUNTY, MONTANA

Benton C. Cavin and Doreen N. Cavin,)
 Petitioners,)

Cause No. DV-11-697(D)

vs.)

OPINION AND ORDER

State of Montana, acting by and through the)
 Montana Department of Revenue and State)
 Tax Appeal Board,)
 Respondent.)

The Department of Revenue’s valuation of lakefront property on Whitefish Lake is based almost entirely on a number calculated by a computer program. That program analyzes property sales data according to a few parameters chosen by the user. Benton and Doreen Cavin have asked this Court to review the State Tax Appeal Board’s (“STAB”) decision affirming their 2009 property assessment. The Cavins’ primary argument is that one of the parameters chosen by the Department for its computer program rendered the program’s calculations—and thus their property assessment based on those calculations—inaccurate. As explained below, this Court agrees, and will therefore reverse STAB’s decision and remand the case for further proceedings.

I. BACKGROUND

The Cavins own a home on Whitefish Lake. The home sits on a long, narrow lot about 300 feet from front to back and roughly 65 feet wide. Their house sits at the very rear of the lot, over 240 feet from the lakeshore. The portion of the lot between their house and the lakeshore is incredibly steep, making for a somewhat treacherous trek down to their beach. Despite their narrow lot, their property abuts the water at a section of the shoreline that runs at a sharp angle from one end of the lot to the other, giving them 94 feet of lake frontage.

For the 2009 tax year, the Department assessed the Cavins’ property at a value of \$2,029,697. Of that number, only \$125,669 represented the value of the Cavins’ home. The remaining \$1,904,028 constituted the value of their land. The Cavins filed a request for an

informal review, as a result of which the Department gave their property a 25% reduction in land value due to the lot's steepness, reducing their tax assessment to \$1,556,227 (the parties do not dispute the value of the property's improvements; only the land value is at issue). The Cavins appealed their new assessment to CTAB. CTAB held a hearing at which the Cavins and Don McBurney, a real estate expert, testified in support of the appeal. The Department was represented at the hearing by Scott Williams and Don Luety. Williams and Luety are appraisers working for the Department. It was Luety's decision to reduce the Cavins' land value by 25% for steepness after he made a visit to the property. Williams is the Department's regional manager and, as explained in more detail below, is responsible for implementing the Computer Assisted Land Pricing ("CALP") model used to determine an average price per front foot on Whitefish Lake. Because front footage is the single most important factor in valuing lakefront real estate on Whitefish Lake, the significance of the CALP front foot model cannot be understated.

Following the hearing, CTAB affirmed the valuation of the Cavins' property. The Cavins then appealed to STAB. STAB held a "paper hearing," allowing the parties to submit additional evidence and argument in the form of filings, and then making its decision based on a review of the record. STAB issued its Factual Background, Conclusions of Law, Order, and Opportunity for Judicial Review ("STAB Decision") in April 2011, affirming CTAB. The Cavins then appealed to this Court. The Cavins also have filed a motion to submit additional evidence.

II. STANDARD OF REVIEW

Following an appeal to STAB, a party "aggrieved by [STAB's] final decision is entitled to judicial review." MCA § 15-2-303(1). Appeals from STAB are governed by the Montana Administrative Procedure Act ("MAPA") "to the extent that it does not conflict with [MCA §] 15-2-303." MCA §§ 15-2-301(5), -302(5).

MAPA provides that, upon judicial review of an agency's decision, the district court "may not substitute its judgment for that of the agency as to the weight of the evidence on questions of fact." MCA § 2-4-704(2). Moreover:

The court may affirm the decision of the agency or remand the case for further proceedings. The court may reverse or modify the decision if substantial rights of the appellant have been prejudiced because:

- (a) the administrative findings, inferences, conclusions, or decisions are:
 - (i) in violation of constitutional or statutory provisions;
 - (ii) in excess of the statutory authority of the agency;
 - (iii) made upon unlawful procedure;
 - (iv) affected by other error of law;
 - (v) clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record;
 - (vi) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion[.]

MCA § 2-4-704(2). Absent one of these findings, “STAB’s value[] must be upheld.” *O’Neill v. Dept. of Rev.*, 2002 MT 130, ¶ 24, 310 Mont. 148, 49 P.3d 43 (citation omitted); *see also id.* ¶ 10 (“A district court reviews an administrative decision in a contested case to determine whether the findings of fact are clearly erroneous and whether the agency correctly interpreted the law.” (citing *Laudert v. Richland County Sheriff’s Dept.*, 2000 MT 218, ¶ 14, 301 Mont. 114, 7 P.3d. 386)).

III. DISCUSSION

The Department is tasked with appraising all residential real property within the state once every six years. *See* MCA § 15-7-111; Mont. Admin. R. (“ARM”) 42.18.107. For the six-year period from January 2009 to December 2014, property must be appraised at its market value as of July 1, 2008. ARM 42.18.124(1)(b). A property’s “market value” is “the value at which [the] 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.” MCA § 15-8-111(2)(a).

The Cavins contend that the Department’s appraisal of their property is well above its market value and cite numerous reasons why STAB was wrong to affirm the Department’s appraisal. They also move to submit additional evidence to this Court in support of their appeal.

A. Review of STAB’s Decision

The Cavins allege various errors in the Department’s valuation and with STAB’s decision to affirm it. Specifically, the Cavins point to (1) the July 2006 time trending date on the Department’s CALP front footage model; (2) errors in the Department’s resale time trend analysis; (3) the Department’s usage of actual front footage rather than a number based on a formula described in the Department’s appraisal manual; (4) the Department’s use of lot width as

a stand-in for front footage in its CALP model; (5) STAB's failure to consider alleged defects with their property, including the mischaracterization of photos taken from a neighboring property as taken from the subject property; and (6) STAB's failure to consider the Lard appraisal. Each will be addressed in turn.

1. July 2006 Time Trending Date

The Cavins assert that the Department's utilization of July 1, 2006, as the "trend date" in its CALP front foot model contravened the Department's duty to value their property as of July 1, 2008. In response, the Department contends that the Cavins simply misunderstand the CALP model. This Court disagrees with the Department.

The touchstone of the Department's valuation of lakefront property on Whitefish Lake is a property's front footage, i.e., the number of feet of actual lakefront a property has. The value of a parcel's land (i.e., its value irrespective of any improvements, which are valued separately) is determined almost entirely by its number of front feet. In fact, to determine the value of a lakefront parcel's land, the Department simply takes the parcel's front footage and plugs it into a formula. (*See* Br. Supp. Pet'n for Judicial Review [ROA # 11] ("Pet'r's Br.") Ex. 7 (Land Valuation Formula).) The formula also allows for possible adjustments for the "influence" of a parcel's positive or negative features—such as the 25% reduction to the Cavins' land value because of its steepness—as well as an adjustment for the property's depth. (*Id.*) But those adjustments are made to a number arrived at solely on the basis of the property's front footage. (*Id.*)

In order to determine the per-foot value of front footage on Whitefish Lake, the Department used a Computer Assisted Land Pricing (CALP) model. (*See* R. at Ex. Marked "Confidential" at 1 (CALP Front Foot Model).) This model used the sale prices of 53 lakefront property sales on Whitefish Lake that occurred during the years 2004 through 2007. The model made an adjustment to the sale price based on when the sale occurred (more on that in a minute), and subtracted from the "adjusted" sale price the assessed value of any improvements on each property, to arrive at the property's adjusted land value. That value was then divided by the property's number of front feet, to arrive at an "Adjusted Price Per Front Foot." (*Id.*)

Based on this "adjusted" data, the model calculated a "base rate" of \$19,724 per front foot. It arrived at that number by calculating the price for a "standard" sized lot on Whitefish Lake. The model's "standard" lot size was set by the Department—specifically, Scott

Williams—at 100 feet of front footage. According to the model, a 100 front foot lot would have a land price of \$1,972,447. Thus, the standard lakefront lot on Whitefish Lake had a price per front foot of \$19,724. This number represented the “price to enter the market on Whitefish Lake” (Pet’r’s Br. Ex. 1 (Hr’g Tr.) 37 (Williams)), and was used as the base value in the Department’s land valuation formula.

The model also calculated an “adjustment” value of \$13,019.86. This value represents the price per front foot beyond the first 100 feet. In other words, a person wishing to buy a lot on Whitefish Lake would pay a “premium” price per front foot just to enter the market, represented by the price of the standard lot, i.e., \$1,972,447 or \$19,724 per front foot. The amount of a lot’s front footage beyond the standard 100 feet would cost less per foot because “the [more] you buy of something the [less] you pay for it.” (*Id.* at 36.) Translated into the Department’s land valuation formula, the Department takes the number of a lot’s front feet above or below 100, multiplies that by \$13,020, and subtracts the result from \$1,972,000 to arrive at the property’s pre-adjustment land value. For example, the Cavins’ lot has 94 front feet. That’s 6 less than 100. Thus, using the Department’s formula: $\$1,972,000 - (6 \times \$13,020) = 1,893,880$, which is the value of the Cavins’ land before any adjustments for influence or depth are made. (*See Land Valuation Formula.*)

Now back to the CALP model’s sale price time trending. One of the functions of the model is to take the inputted sale prices and predict what those prices would have been if they had occurred on a different date. The model does this by adjusting (i.e., “time trending”) the sale prices according to a predetermined percentage rate. That percentage rate reflects the change occurring to the market over a period of time. (*See Hr’g Tr. 34 (Williams) ([T]he principle of change tells us that as the market changes . . . you should track time as well as an influence to the market.”*.) Thus, for example, one might determine that the market in a certain area was rising at a rate of 1% per month between 2006 and 2007.¹ So a property that sold for \$100,000 in June of 2006 would have sold for \$101,000 had the sale occurred one month later.

The CALP model allows for this adjustment by permitting the user to input the rate of change, as well as a “trend date.” Sales that took place prior to the trend date are adjusted upward (i.e., increased) based on how long before the trend date they occurred. Specifically, the

¹ The method used by the Department for determining that percentage rate is discussed in the next section.

number of months between the sale date and the trend date is multiplied by the monthly rate of change (represented by a percentage). The resulting percentage is the amount by which the sale price is increased. So, taking the above example, if the user chooses November 2006 as the trend date and 1% as the monthly rate of change, the \$ 100,000 property sale that occurred in June 2006 would be adjusted upward by 6%, or \$6,000—6 months from June through November, inclusive, multiplied by the 1% monthly rate of change—for an “adjusted” or “time trended” sale price of \$106,000. Conversely, sales occurring after the trend date are adjusted downward in the same manner. Thus, a sale occurring in December 2006 for \$100,000 would be adjusted to \$99,000.

So far, so good. Because the Department is tasked with valuing property as of July 1, 2008, it can choose that date as its “trend date” in the CALP model and just hit “enter.” All the sales inputted (ranging from 2004 to 2007) would be adjusted upward to get their values as of July 2008, representing a steady increase in the market from 2004 through July 1, 2008. Simple, right? Unfortunately, no. What about when a market rises *and* falls during the timespan from which inputted sales are chosen? Apparently, not even the luxury housing market was immune to the economic downturn, and prices of area lakefront real estate began to decline sometime in 2006. (*See* Hr’g Tr. 34.)

Williams attempted to adjust the CALP model to account for this rise and fall. He did so by choosing July 2006 (as opposed to 2008) as the CALP model’s “trend date.” As Williams explained at the CTAB hearing:

[T]he trend date that we utilized on this was July of '06. The reason that was done is that we kept hearing from the press that the market is falling, the market is falling, the market is falling and with the issue with that we started looking at Whitefish Lake and we did notice that the top pricing that these large sales were now starting to come down. So I trended the sales to July of '06. That means that if you were to look at time trending, time trend analysis, the principle of change tells us that as the market changes that you should track time as well as an influence to the market. *In doing the trending of '06 we trended everything to that date of '06. If it occurred after that it then trends down to 10 percent, 10.8 percent per month.* [sic throughout].

(CTAB Hr’g Trans. 34 (bolding and italics added).) In other words, if sales in the model occurred before July 2006, they were adjusted up, whereas if they occurred after July 2006, they were adjusted down. As explained above, once the adjustment was made, the model used the

adjusted sale prices to determine the price per front foot which, in turn, was used as the basis for the Department's land valuation formula.

The Department's error in this regard should be apparent. Adjusting pre-2006 sale prices upward may reflect the fact that, had those sales occurred in 2006, the sale price would have been higher. However, it fails to account for the post-2006 drop in the market (which *was* incorporated into the CALP's post-2006 sales by adjusting them downward). Stated simply, all of the pre-2006 sales used in the Department's CALP model were erroneously overvalued because they were not adjusted downward.²

On appeal, the Department tries to explain William's error by mischaracterizing what he did:

Mr. Williams stated that . . . the market in the Whitefish Lake area appeared to "peak" in 2006 and that it remained steady or slightly decreased between 2006 and July 1, 2008.³ To address this change in the market, Mr. Williams time trended the sales prices used in the model upward by the monthly rate of change of 10.8% until July 2006, and downward by that same percentage from July 2006 to July 2008.

(Dep't Revenue's Br. Resp. Pet'r's Supp. Br. [ROA # 15] ("Dep't's Resp.") 6.) This is simply not true, for two reasons.

First, the CALP model printout clearly states that 10.8% is the *yearly*—not monthly—rate of change. According to the printout, the monthly rate of change utilized is 0.90% (which makes sense; 10.8% per year divided by 12 months results in 0.90% per month).⁴

² At first glance, what the Department—i.e., Scott Williams—did by choosing a trend date in 2006 may seem like it makes perfect sense. It appears to be his best effort at incorporating a market rise and then a market fall into the CALP model by making the adjustments reflect what the market was doing pre- and post-2006. However, it seems to misapprehend what "time trending" is and what it can do. Inflating pre-2006 sales does not account for the post-2006 market drop. Imagine the market trend represented by a simple price over time graph representing the average price per front foot from 2004 until 2008. If the market—and thus the average price per front foot—rises until 2006 and falls thereafter until 2008, the graph would look like a mountain-shaped line with its summit at 2006. By picking 2006 as a trend date, Mr. Williams took all of the pre-2006 sales—represented by points on the line—and pushed them up the left side of the mountain to its 2006 summit, without allowing them to fall down the other side to 2008. Unfortunately for the Cavins, the Department, and the Court, it is Mr. Williams, not the Cavins, who "misapprehend the time trending of the computer assisted land pricing model." (STAB Order 7.)

³ There is no evidence in the record of the market remaining "steady," as the Department asserts. Rather, Williams unequivocally stated that "the market is falling, the market is falling, the market is falling," and that "the top [sales] pric[es] . . . were . . . starting to come down." (Hr'g Tr. 34.)

⁴ The Department's mistake in this regard is understandable. The resale trend analysis to which it refers and from which Mr. Williams presumably derived the 10.8% figure, states that the mean of the monthly rate of change is 10.79%. (See Pet'r's Br. Ex. 13 at 2 (Resale Trend Analysis).) Indeed, Mr. Williams made the same mistake when

Second, and more importantly, anyone with a calculator can see that the CALP model did not “time trend[] the sales prices . . . upward by the monthly rate of change . . . until July 2006, and downward by that same percentage from July 2006 to July 2008.” (*Id.*) Rather, the CALP model did exactly what Mr. Williams (somewhat unintelligibly) said it did: “If [a sale] occurred after [July 2006] it [was] trend[ed] down . . . [0.90]% per month” from July 2006 until the sale date. (Hr’g Trans. 34.) If a sale occurred before then, it was trended up by 0.90% per month from the sale date to July 2006. (*See id.*) So if a sale occurred in, say, January of 2005, its sale price would be increased by 17.1% (0.90% for each of the 19 months from January 2005 to July 2007, inclusive) to arrive at its “time trended” sale price. Whereas, if a property sold on, say, the last day of August 2007, its sale price would be reduced by 11.7% (0.9% for the 13 months occurring after the July 2006 trend date until the August 31, 2007 sale).

An example demonstrates this: A sale of one property occurred on May 31, 2006, for \$2,500,000.00. This property’s “time trended sale” price is \$2,545,000.00. If the sale price is trended—i.e., increased—for the two months of June and July 2006,⁵ by 1.8% (0.90% for each of those months), the result is \$2,545,000.00, just like on the CALP model’s printout. Whereas, using the Department’s explanation, i.e., taking the original sale price of \$2,500,000.00 and “time trend[ing] [it] . . . upward by the monthly rate of change of [0.9]% until July 2006, and downward by that same percentage from July 2006 to July 2008,” yields a time trended price of \$2,018,185.00. Perhaps that *should have been* the time trended sale price,⁶ but it most certainly was not. In Mr. Williams’ own words, if after 2006 “the market [was] falling, the market [was] falling, the market [was] falling,” then deriving an average price per front foot based on a group of sales over half of which were adjusted *upward* cannot be an accurate way to reach a value as of July 2008. Thus, STAB’s decision affirming a valuation based almost entirely on that

attempting to explain the CALP model: “In doing the trending of ‘06 we trended everything to that date of ‘06. If it occurred after that it then trends down . . . 10.8 percent *per month*.” (Hr’g Trans. 34 (emphasis added).) The Resale Trend Analysis states that the yearly rate of change is a whopping 143.49%. The irregularities in the Resale Trend Analysis will be discussed below.

⁵ The CALP model appears to take into account the effect of the entire month chosen for the “trend date” such that the trending continues through the entire month of July 2006.

⁶ The Department’s explanation of what Mr. Williams did, although inaccurate, appears to be an appropriate way to time trend sales that occur during a market that rises and then falls; it pushes the sale prices up one side of the mountain and then down the other. *See* note 2, *supra*. The Court has no idea whether or not the CALP model is capable of such a calculation; however, it is clear that what the CALP model *did* do is *not* an accurate way to reflect an average price per front foot on Whitefish Lake as of July 2008 based on the evidence in the record.

inaccurate⁷ CALP front foot pricing model was clearly erroneous. And because this clearly erroneous decision affirmed a valuation based on flawed time trending that resulted in an inflated average price per front foot and therefore an inflated property valuation, the Cavins' rights were prejudiced.

Because this error will require a remand for a re-valuation of the Cavins' property, the Court will address the validity of the Cavins' other bones of contentions with STAB's decision.

2. Resale Trend Analysis

As best as the Court can decipher from Mr. Williams' explanation at the CTAB hearing, he conducted a "resale trend analysis" in order to determine the rate of change to input into the CALP front foot model. (*See* Pet'r's Br. Ex. 13 at 2 (Resale Trend Analysis).) In other words, the Resale Trend Analysis appears to be the source of the 10.8% per year figure chosen for the CALP front foot model to make its time trending adjustments. Mr. Williams explains:

We did a resale time trend analysis before we ever did this [CALP front foot model], having sales and resales of property on Whitefish Lake. . . . What I am presenting to the board, this was the time trend analysis that we had that was . . . showing what was happening in the market on Whitefish Lake properties. There's six sales and resales of property that occurred on the lake that you notice. [sic throughout]

(Hr'g Tr. 35.) The Resale Trend Analysis calculated the amount that each of the six properties increased in value (i.e., the increase in sale price) from the first sale to the second, casting it in terms of a percentage per month increase in the price per front foot for each property.⁸

⁷ Calling the CALP model "inaccurate" is perhaps unfair to the model. No doubt, the figures it generated were accurate based on the values chosen and inputted. The CALP model is more appropriately described in this situation as having been improperly used. The Court is well aware of the longstanding principle that the Department is "particularly suited for settling disputes over the appropriate valuation of a given piece of property," and that "assessment formulations are within the expertise of the" Department. *O'Neill v. Dep't of Revenue*, 2002 MT 130, ¶ 23, 310 Mont. 148, 49 P.3d 43 (citations omitted). However, the Court does not consider pointing out the flaw in Mr. Williams' utilization of the CALP model as "substitut[ing] its judgment for that of the" Department, MCA § 2-4-704(2). Rather, it is akin to a situation in which the Court were called upon to review, for example, an alleged zoning violation, and the homeowner points out to the board of adjustment that the inspector had measured in meters instead of feet, or had been holding his calculator upside down, or been looking through the wrong end of his binoculars. In this case, the bias toward its own "expertise" appears to have blinded both CTAB and STAB to what amounts to a basic and fundamental misunderstanding of the primary tool used to form the basis of the Department's formula for valuing property on Whitefish Lake.

⁸ The Resale Trend Analysis is able to determine price per front foot because the "sale price" it uses is the actual sale price minus the value of any improvements (a house, etc.) for a figure representing only the land price which, as explained above, is a price paid almost entirely for front footage.

The Cavins point to two alleged errors in the Department's resale time trend analysis, arguing that they resulted in an artificially high valuation. First, the Cavins note that the first property in the Resale Trend Analysis underwent a boundary adjustment between the first and second sales, adding an additional 27 front feet to the property. The Cavins assert that the Resale Trend Analysis failed to account for this increase. (*See* Pet'r's Br. 11.) This is untrue. The Resale Trend Analysis clearly reflects that its percentage is based on the increase in average price per front foot, calculated based on the land's sale value with 77 front feet in October 2000 and the land's sale value with 103 front feet in April 2006.

Second, the Cavins point out that the Resale Trend Analysis calculated the second sale amount of the 6th property by mistakenly subtracting \$1,769.00—instead of the correct figure of \$176,927.00— from the sale price to reach the land sale price. The Cavins are correct. On remand, if the Department reuses the Resale Trend Analysis in determining the value of the Cavins' property, it should correct this error.

3. The Department's Usage of the Property's Actual Front Footage

The Cavins assert that the Department erred in calculating the value of their property using their actual front footage, rather than the "right angle" method described in the Department's Appraisal Manual. According to that method, "the established frontage and depth [of a lot] must form right angles." (Pet'r's Br. Ex. 12 (Mont. Appraisal Manual) 38.) The Cavins point out that the Appraisal Manual considers this the "most important rule of lot sizing," and cautions that "standard front foot sizing procedures and techniques . . . are essential to maintaining uniformity in land valuations." *Id.* The Cavins assert that the Department's failure to use the manual's "right angle" method was unfair because under that method, their front footage would have been equal to their lot width, which is 66 feet, as opposed to the lots actual front footage, which is 94 feet.

However, the manual also permits the Department to disregard its methods when appropriate. It states that an appraiser "must at all times exercise sound judgment in determining whether or not the procedures [such as the right angle method] are applicable, using them only if they calculate accurate, equitable land valuations." (*Id.*) The Department exercised such judgment in deciding to use actual front footage for Whitefish Lake property because a property's front footage is the single most important factor in pricing lakefront property on Whitefish Lake. (*See, e.g.,* Hr'g Trans. 24 ("Mr. Williams: Mr. McBurney, in your experience

in dealing with Whitefish Lake, what is the number one unit of comparison that is bought, sold, marketed, and appraised on Whitefish Lake? Mr. McBurney: Dollars per front foot.”.)

Accordingly, it cannot be error for the Department to utilize the actual number of a parcel’s front footage instead of one based on an approximation.⁹ The Department uses actual front footage for every parcel on Whitefish Lake. (See Hr’g Trans. 23 (“Mr. Luety: On every single property on Whitefish Lake . . . , we used whatever there is as far as the subdivision deed or a certificate of survey” to determine the parcel’s front footage for tax appraisal purposes.”).) This may appear disadvantageous for parcels such as the Cavins’ that are shaped in such a way as to provide a larger length of beach front than if they were a perfect square. However, the Court considers it a safe bet that if the Cavins were to list their property for sale, they would no doubt describe their property using its actual front footage, rather than its frontage value based on the “right angle” method. It cannot therefore be error for the Department to value their property by doing the same thing.

4. Lot Width as Front Footage in the CALP Model

Strangely enough, while The Department uses a parcel’s actual front footage to calculate its value by plugging it into their formula, the CALP front foot model—which calculated the average price per front foot used in that formula—does not. Rather, the CALP front footage model uses a lot’s width as a stand-in for its front footage. (See CALP Front Footage Model (listing “Lot Width” in the column from which the figure used to calculate “Adjusted Price Per Front Foot” is taken).) However, as the Cavins point out, the actual figures used in the CALP model apparently fail to correspond to either actual lot width or actual front footage. (See Pet’r’s Br. 12–13.) This may not have been problematic if the numbers used fell on both sides of the actual front footage figures with some regularity. However, from the data provided by the Cavins, the numbers used tend to fall below the actual number of front feet for any given lot. (See *id.*) And as the Cavins point out, “[t]he effect of using arbitrarily low widths . . . [causes] prejudice . . . [because] using a smaller [that actual] number of [front] feet will result in a larger [than actual] price per front foot.” (*Id.* at 14.)

Accordingly, on remand, if the Department is able to figure out a way to correctly utilize the CALP front foot model to accurately produce an average price per font foot as of July 1,

⁹ Notably, the fictional example parcels used in the Appraisal Manual to describe the right angle method abut a street, not a lake.

2008, it should either input the actual front footage data or be prepared to explain on appeal why it chose not to do so.

5. Additional Property Deficiencies

Following the Cavin's informal appeal, the Department's appraiser reduced its assessment value of the Cavins' property by 25% because of the steepness of their lot. The Cavins assert that the Department failed to consider additional deficiencies which, they claim, should entitle them to further reductions in assessment value.

These alleged deficiencies include the Critical Areas Ordinance ("CAO"), which "specifically provides for restrictions on steeped-sloped property." (Pet'r's Br. 15.) However, the property's steepness was the precise basis for Luety's reduction. Thus, the Court fails to see how the CAO should be considered a deficiency *in addition to steepness* when its only burden on the property to which the Cavins can point is a direct function of that feature.

Another deficiency the Cavins cite is the 15 foot setback requirement resulting from the zoning on their lot. Because their property is only 66 feet wide, this limits the width of any structure to 36 feet. However, Williams and Luety testified that other properties with narrower lots have the same setbacks, and therefore this "deficiency" does not distinguish the Cavins' lot from other lots of similar size. (*See* Hr'g Tr. 46 ("Mr. Cavin: Do you know . . . the side setbacks on that one? Mr. Williams: . . . It's a 50 foot lot . . . [with] the same side setbacks as every one of these lots here in the . . . city of Whitefish. Mr. Cavin: Minus two 15s would be only 20 foot [sic] left for the house. Mr. Luety: Yup, it's narrow.")) Accordingly, the Department did not abuse its discretion in disregarding it.

Finally, the Cavins assert that the Department submitted photos to demonstrate the view from their property (*see* Hr'g Tr. 39 ("Mr. Luety: The other two photos attached to this are views from . . . [the] Cavin's [sic] property")), but that the photos were actually taken from a different property, owned by Nancy Cabe. The Cavins have provided a statement from Ms. Cabe to that effect and the Department does not appear do dispute that the photos were misrepresented at the STAB hearing. Accordingly, on remand, the two photos purportedly taken from the Cavins' lot that are not, in fact, taken from their lot should not be considered.

6. Lard Appraisal

Taxpayers unhappy with the Department's appraisal of their property may, as part of their appeal, submit their own, independent appraisal. ARM 42.20.455(1). In order for the

Department to consider the appraisal, it must meet certain requirements, including that it must “have a valuation date within six months of the base-year valuation date,” i.e., July 1, 2008. *Id.*

The Cavins submitted an appraisal of their property (the “Lard Appraisal”) completed by Gene Lard, a certified appraiser from Kalispell. (*See* Cavin Property Tax Appeal Binder, Ex. 4 (Lard Appraisal).) However, relying on their (not unreasonable) understanding of the Department’s CALP model time-trending analysis—not to mention CTAB’s adoption of it—the Cavins instructed Lard to value their property as of July 1, 2006. (*See* Lard Appraisal 2.) The Cavins presumed—again, not unreasonably—that if the Department’s appellate bodies were affirming an appraisal based on Mr. Williams’ 2006-based time trending, they’d better get their own 2006 appraisal to rebut it. (*See* Pet’r’s Br. 15 (“The DOR appraised Cavin’s property by time trending the comparable properties to 2006. In response, Cavin commissioned an appraisal for the same year, 2006.”).) STAB rejected the appraisal because it did not value the property as of 6 months of July 1, 2008 as required. (STAB Decision 6.) The Cavins now assert this was error. The Court disagrees.

While the Cavins actions are understandable considering Mr. Williams and his CALP model time trending to 2006, the law requires appraisals to value the property within 6 months of July 1, 2008. Accordingly, the Department’s disregard of the Lard Appraisal was not error, and they will not be required to consider it on remand. However, the Cavins have now submitted a new appraisal with a proper valuation date, which the Court will address below.

B. The Cavins’ Motion to Admit Additional Evidence

Ordinarily, judicial review of administrative decisions is “confined to the record.” MCA § 2-4-704(1). However, on judicial review of a STAB decision, “[n]otwithstanding the provisions of 2-4-704(1), the court may, for good cause shown, permit additional evidence to be introduced.” MCA § 15-2-303(5). “Any legally sufficient reason meets the good cause requirement of Section 15-2-303(4), MCA, and such sufficiency lies within the discretion of the reviewing court.” *Leahy v. Dep’t of Revenue*, 266 Mont. 94, 98, 879 P.2d 653, 655–56 (1994) (quoting *O’Neill v. Dep’t of Revenue*, 227 Mont. 226, 231, 739 P.2d 456, 459 (1987)).

The Department argues that an additional requirement for submitting additional evidence must be satisfied. The Department cites MCA § 2-4-703, which allows a party to submit additional evidence if “there were good reasons for failure to present it in the proceeding before

the agency.” The Department argues the Cavins have failed to show good reasons why they failed to present this additional evidence before CTAB or STAB.

However, the Court concludes that MCA § 2-4-703 contemplates submitting additional evidence *to the agency*, not the court. That section clearly states: “the court may order that the additional evidence be *taken before the agency* upon conditions determined by the court. The agency may modify its findings and decision by reason of the additional evidence and shall file that evidence and any modifications, new findings, or decisions with the reviewing court.” MCA § 2-4-703 (italics added). The STAB appeal statute, in contrast, allows for additional evidence to be taken before the court, and sets forth its own standard for that relief. *See Hi-Line Radio Fellowship v. Dep’t of Revenue*, 227 Mont. 150, 154, 737 P.2d 886, 888 (1987) (Judicial review of contested MAPA cases, *other than those under Section 15-2-303 . . .*, as to receipt of additional evidence, are controlled by Section 2-4-703, MCA.” (italics added)).

Because this case is being remanded to STAB, this Cavins’ motion to submit additional evidence is, for reasons just set forth, effectively moot. However, in order to provide guidance to STAB on the propriety of the Cavins’ proposed evidence, the Court will address their motion.

1. Seipel Appraisal, Houston Drive Comparable, and Statements

As explained above, STAB refused to consider the Lard appraisal because its valuation date was July 1, 2006, instead of the required date of July 1, 2008 (or within 6 month of that date, *see* ARM 42.20.455(1)). For their appeal, the Cavins have commissioned another appraisal, this time using the correct valuation date. (*See* Mot. for Leave to Submit Additional Ev. & Br. Supp. [ROA # 10] (“Mot. for Leave”) Ex. 1 (Seipel Appraisal).) Accordingly, they will be entitled to have it considered by STAB on remand.

The Cavins also seek to admit evidence of sales of properties that they assert are similar to theirs for the purpose of comparison. (*See* Mot. for Leave Exs. 2, 3 (Houston Drive Comparables Evidence).) Additionally, they seek to introduce statements from neighbors substantiating their claim regarding photos presented at the STAB hearing by the Department and represented as having been taken from a vantage point located on the Cavin’s property. They should be entitled to submit this evidence for STAB’s consideration on remand.

2. MLS Listings

Finally, the Cavins also seek to admit evidence of MLS listings to show the sale prices for houses used in the Department’s CALP model, arguing that the listings “are the best evidence

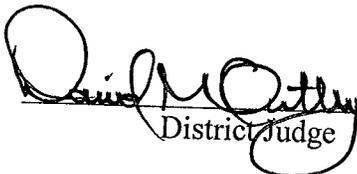
of these sale prices.” (Mot. for Leave 2.) However, the Department has access to “Realty Transfer Certificates” for every real property sale in the state. *See* MCA § 15-7-305. These RTCs, as opposed to MLS listings, are the best evidence of sale prices for real property. Accordingly, STAB need not consider the Cavins’ MLS listings on remand.

IV. CONCLUSION AND ORDER

For the reasons set forth above, STAB’s decision to affirm CTAB’s denial of the Cavins’ appeal was in error. Accordingly, STAB’s decision is hereby REVERSED, and this case is REMANDED to that body for additional proceedings consistent with this opinion. *See Dep’t of Revenue v. Paxson*, 205 Mont. 194, 199, 666 P.2d 768, 770 (1983) (“[I]t would be too time consuming to remand [this case] to the county tax appeal board to start the process all over again. Because the State Tax Appeal Board not only has review authority, but also can reopen the case to take additional evidence (section 15-2-301(2), MCA), it is proper that the state board again hear this case to determine the proper valuation of the taxpayer's property.”).

It is so ordered.

May 5TH, 2015.


District Judge

c: Sean S. Frampton
Michele R. Crepeau and Amanda L. Myers