

BEFORE THE MONTANA TAX APPEAL BOARD

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FRED EASY,	)	DOCKET NO.: PT-2014-7
Appellant,	)	
-vs-	)	FINDINGS OF FACT,
	)	CONCLUSIONS OF LAW,
THE DEPARTMENT OF REVENUE	)	ORDER and OPPORTUNITY
OF THE STATE OF MONTANA,	)	FOR JUDICIAL REVIEW
Respondent.	)	

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**Statement of Case**

Fred Easy (Taxpayer) appeals the December 19, 2014 order of the Broadwater County Tax Appeal Board (CTAB) affirming the Department of Revenue's (Department or DOR) valuation of four lots located in the Colter's Run Subdivision, Broadwater County, Montana. The Taxpayer argues the DOR overvalued the property for tax purposes, and seeks a reduction in the value assigned by the DOR. At the Montana Tax Appeal Board (Board) hearing held on June 2, 2015, Fred Easy (Taxpayer) appeared on his own behalf. Michele Crepeau, tax counsel, represented the DOR. Mark Olson, the Bozeman area manager, provided testimony and evidence in opposition to the appeal.

The Board having fully considered the testimony, exhibits, and all matters presented, finds and concludes as follows:

### Issue

The issue before this Board is whether the Department of Revenue determined an appropriate market value for the subject vacant lots for tax year 2014.

### Summary

Based on a preponderance of the evidence, the Board modifies the decision of the Broadwater County Tax Appeal Board.

### Evidence Presented

1. Due, proper and sufficient notice was given of this matter and of the time and place of the hearing. All parties were afforded opportunity to present verbal and documentary evidence.
2. Fred Easy is the Taxpayer and Appellant in this proceeding and, therefore, has the burden of proof.
3. The subject properties are four tracts of land with the following legal description:

Lots 11, 12, 36 and 37, Colter's Run Subdivision, NE4 of Section 20, Township 2 North, Range 1 East, County of Broadwater, State of Montana. DOR Property Record Cards.

4. For tax year 2014, the DOR originally appraised the four subject lots at the following values totaling \$472,376. Appeal Form and Taxpayer and DOR Responses to Administrative Hearing Status Questionnaire at 1:
  - 43-1104-20-1-01-38-0000: \$106,938, Lot 11 - 2.247 acres
  - 43-1104-20-1-01-36-0000: \$139,951, Lot 12 - 4.931 acres
  - 43-1104-20-1-02-14-0000: \$114,859, Lot 36 - 2.891 acres
  - 43-1104-20-1-02-16-0000: \$110,628, Lot 37 - 2.547 acres
5. Taxpayer timely filed an AB-26 form for a property review on June 17, 2014. The DOR did not amend the values. DOR Response to Administrative Hearing Status Questionnaire at 2, DOR CTAB Exhibit B.
6. The Taxpayer filed an appeal with the Broadwater County Tax Appeal Board (CTAB) on July 21, 2014, requesting a land value of \$234,476. Appeal Form. Before this Board, the Taxpayer requested a value of one-half of that set by the Department.
7. The Broadwater CTAB heard the appeal on December 18, 2014, and made no change in the DOR land value. Appeal Form and Taxpayer Response to Administrative Hearing Status Questionnaire at 1.
8. The Taxpayer timely appealed to this Board on January 30, 2015, stating the following reasons for appeal:

Six of seven properties used by the DOR were located in subdivisions on either the Missouri River

or Canyon Ferry [lake]. As such, the CALP base rate and residual rate are at least 50% higher than rates used by the DOR for subdivisions located near Colter's Run. Assessments are overvalued by DOR.

9. The Taxpayer purchased the subject lots on May 21, 2013 for \$10,000 each, at a bank auction conducted by Yellowstone National Bank.  
CTAB Hr'g Tr. 10:4-8; DOR CTAB Ex. B.
10. Prior to this purchase, the lots were classified as nonqualified agricultural land as the prior owner owned more than 20 contiguous acres. See §15-6-133(1)(c), MCA. DOR CTAB Ex. B.
11. When the Taxpayer purchased the subject lots, the acreage was reduced to below 20 acres, *see* ¶ 10 above, and the property was reclassified as tract land for tax year 2014. *See* §15-6-134(1)(b), MCA; A.R.M. 42.20.606(2); DOR CTAB Ex. B.
12. DOR assigned the subject lots to Neighborhood 012, 012A through DOR's market model number 4 for Broadwater County (Model 4.)  
MTAB DOR Ex. C. Model 4 relied upon seven sales of vacant land parcels ranging in size from 1.15 to 4.90 acres. The Model 4 properties sold between May of 2007 and April of 2008 for prices ranging from \$75,000 to \$125,000. Model 4 assigns a base rate of \$91,600 to the first

acre and a residual value of \$12,300 for each remaining acre. MTAB DOR Ex. C.

13. Taxpayer provided evidence to show that Model 4 relied upon sales of properties located as far as 30 miles away from the subject lots. MTAB Hr'g Tr. 7:20-25. In addition, he demonstrated that three of the DOR's Model 4 "comparable" properties front the Missouri River. MTAB Hr'g Tr. 38:23-25. He also demonstrated that the subject lots do not enjoy waterfront nor do they have any water access. Thus, Taxpayer questioned the comparability of the properties used in Model 4 that determined the DOR's assessed value for his subject lots. MTAB Hr'g Tr. 8:3-5.

14. Taxpayer testified that he became aware of the existence of DOR's Neighborhood 001B market model 3 (Model 3) during the course of discovery while he was preparing for this appeal. DOR Ex. E, MTAB Hr'g Tr. 9:18-21. Model 3 relied upon 28 sales of vacant lots which sold in 2007 and 2008. These lots ranged in size between one and 4.98 acres and had sales prices between \$39,900 and \$75,000. All of the 28 sales in Model 3 were located within a maximum distance of 4 miles of the subject lots. MTAB Hr'g Tr. 6:3-5. Model 3 assigns a base rate of \$40,900 to the first acre and a residual value of \$10,850 for each remaining acre. MTAB DOR Ex. E.

15. The subject lots are part of the Colter's Run subdivision, which is one of the many subdivisions located in the proximity of the Three Forks Highway 12 - Interstate 15 interchange. DOR Ex. E. These subdivisions all started selling lots about the same time, namely 2006. The DOR refers to these subdivisions as the Wheatland Hills Junction area. MTAB Hr'g Tr. 7:3-6, 21:9-10.
16. Two lots sold in the Colter's Run subdivision in 2006 in what the Department determined to be valid sales. Hr'g Tr. 23:14-21. No other lots sold in Colter's Run until the bank auction on May 21, 2013, when Yellowstone National Bank liquidated and disposed of all of the remaining lots in the subdivision. MTAB Hr'g Tr. 7:9-10.
17. Mark Olson is the Department's Bozeman area manager, whose office was responsible for developing the land models for Broadwater County for the six-year reappraisal cycle that started on January 1, 2009. MTAB Hr'g Tr. 14:16-18. The purpose of land models is to develop values to assign to land in the different neighborhood areas. MTAB Hr'g Tr. 23:22-23. Olson defined a neighborhood as a marketing area or areas where land sells differently. MTAB Hr'g Tr. 26:2. Olson created both Model 3 and Model 4 as part of the 2009-2014 reappraisal cycle. MTAB Hr'g Tr. 14:20-24.

18. After the bank auction, as part of the Department's process to reclassify the lots as tract land, Olson determined that the Colter's Run lots should be valued using Model 4 in 2013. Hr'g Tr. 15:1-3.
19. Olson testified that the two lots that sold in the Colter's Run subdivision in 2006 sold for prices that were almost *three* times the sales prices of similar sized lots in the surrounding subdivisions that sold in 2007 and 2008. MTAB Hr'g Tr. 23: 6-13. Given the significant price variation of these two lots, Olson determined that the Colter's Run lots should be valued using Model 4. This model comprised of properties that sold for more than the average or typical lot in the neighborhood area, the marketing area. MTAB Hr'g Tr. 19:3-10.
20. Olson testified that he tried to include the two Colter's Run 2006 sales in Model 4, but the model software rejected the sales as being outliers. MTAB Hr'g Tr. 18:19-25; 19:1-3.
21. Olson testified that he also tried to include the two Colter's Run 2006 sales in Model 3, but the model again rejected the sales as outliers. MTAB Hr'g Tr. 22:9-13.
22. Olson concluded that both Model 3 and Model 4 would undervalue the lots in Colter's Run, but Model 4 was closer to reflecting the market value of the subject lots because all of the sales in Model 4 and the two

2006 sales in Colter's Run exceeded the value of sales elsewhere in Broadwater County. MTAB Hr'g Tr. 19:8-10; 24:8-13.

23. Olson testified that the Department was puzzled as to why the two lots in Colter's Run sold in 2006 for so much more money than those surrounding lots in the Wheatland Hills Junction area, and more than those lots that were located in subdivisions that were in close proximity to water (more than 20 miles away from the subject lots.) MTAB Hr'g Tr. 25:3-18.
24. Olson could not identify any attributes as to what might have made the Colter's Run lots intrinsically more valuable than the other lots located in the Wheatland Hills Junction area. *Id.*
25. Olson also testified that there were no shared attributes between the two Colter's Run sold lots and the other seven lots used as comparables in Model 4, three of which front the Missouri River and three others that are located in close proximity to water. MTAB Hr'g Tr. 25:14-18, 30:1-9.
26. The only thing Olson could possibly attribute to the high sales prices of the lots in Colter's Run was that the developer marketed the lots as horse property. *Id.*
27. Taxpayer testified that at the time of the bank auction only one house had been built in the Colter's Run subdivision, presumably on one of the

two lots that the Department considered valid sales in 2006. Taxpayer described the house as an earth berm house, built by an architect that was located to take advantage of a lot with a hillside grade and good south-southwestern exposure. MTAB Hr'g Tr. 30:9-15.

28. Taxpayer identified numerous math errors and other systematic inconsistencies between the Department's Property Record Cards and the corresponding sales used to develop the CALP models in both Model 3 and Model 4. MTAB Hr'g Tr. 33:5-20.

#### **Principles of Law**

1. The Montana Tax Appeal Board has jurisdiction over this matter. §15-2-301, MCA.
2. All taxable property must be assessed at 100% of its market value except as otherwise provided. §15-8-111, MCA.
3. Market value is the value at which property would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or to sell and both having reasonable knowledge of relevant facts. §15-8-111(2) (a), MCA.
4. Comparable properties used for valuation must represent similar properties within an acceptable proximity of the property being valued. §15-8-111(3), MCA.

5. For the taxable years from January 1, 2009, through December 31, 2014, all class four properties (residential property) must be appraised at its market value as of July 1, 2008. ARM 42.18.124(b).
6. Residential lots and tracts are valued through the use of CALP models. Homogeneous areas within each county are geographically defined as neighborhoods. The CALP models reflect land market value as of July 1, 2008. ARM 42.18.110(7).
7. The State Tax Appeal Board must give an administrative rule full effect unless the board finds a rule arbitrary, capricious, or otherwise unlawful. §15-2-301(4), MCA.

#### **Findings of Fact and Conclusions of Law**

The Board must determine, based on a preponderance of the evidence, whether the DOR set an appropriate value on the subject property for tax year 2014.

The Board has authority to hear evidence, find the facts, apply the law, and arrive at a proper value for the subject property. Generally, the appraisal of the Department of Revenue is presumed to be correct and the Taxpayers must overcome this presumption. The Department of Revenue bears a certain 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).

Taxpayer argues that because the neighborhood valuation Model 4 had other lots scattered, as far as 30 miles, around Broadwater County that share no geographical or physical attributes to the subject lots; the Model 4 overvalued the subject lots. The DOR claims that the subject lots were placed in the correct neighborhood because the two Colter's Run lots that sold in 2006 sold for significantly more than the surrounding lots. According to DOR, the neighborhood is correct although there are no obvious physical or intrinsic attributes that account for this difference. DOR determined it was appropriate to value the subject lots using the model 4 because the DOR appraiser believed that Coulter's run lots would sell for more than surrounding neighborhood properties.

We agree with the Taxpayer and find that the Department failed to meet its obligation to value the subject lots using comparable sales that are similar in character and within an acceptable proximity to the property being valued. §15-8-111(3), M.C.A. The Department has offered no credible explanation for why it did not value the subject lots using Model 3 that was created using 28 sales that occurred within a 4-mile radius of the subject property and that share similar physical attributes. In contrast, Model 4 was created using seven sales

that occurred as far as 30 miles of the subject lots. These properties share no geographical or physical attributes to the subject lots.

The Department's explanation that Model 3 would undervalue the lots because it rejected the two Colter's Run lots as outliers does not pass muster because Model 4 also rejected the two sales as outliers. The Board concludes that both models rejected the sales as outliers because these sales were anomalies and did not reflect the actual fair market value of the lots in that neighborhood. The Board does not share Olson's conviction that the sale price of the two lots out of a 41-lot subdivision,<sup>1</sup> reflect the fair market value of lots located within the Colter's Run subdivision. The Department did not credibly justify how these two lots reflect the market trend. The Department has failed to meet its threshold burden of proof.

The Board is convinced that the market value is closer to the value requested by the Taxpayer. The undisputed fact that no other lots sold in the subdivision for seven long years until a bank liquidation auction in 2013 when Taxpayer bought his four lots supports this conclusion. Similarly, the fact that the surrounding subdivisions benefited from at least 28 sales in 2007 and 2008, demonstrates that the prices paid for the two lots sold in 2006 far exceeded

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<sup>1</sup> These lots sold within the first year of the development during a time of economic expansion.

their true fair market value. The Board does not have to determine whether the two Colter's Run sales were a reflection of speculation in the market or unique sales that suited the buyer's particular purposes to conclude that the buyers paid more for their lots in 2006 than the fair market value of those lots as reflected in the surrounding neighborhood sales.

The DOR used the sales prices of the two 2006 sales as the starting point or benchmark for determining the value of the other lots located in Colter's Run. Thus, the DOR searched for other properties in Broadwater County that sold at a higher price range. The DOR found three properties, fronting the Missouri River, located 18 miles away from the subject property, and determined to use those as comparable properties because they shared one characteristic – their price. The DOR's Model 4 used three additional comparable properties, located in close proximity to Canyon Ferry Lake, but located 35 miles away from the subject property. DOR used these properties as comparable properties because they shared one characteristic – their price. The Board finds the Department's logic puzzling and unsupported by the Department's 2008 Appraisal Manual. DOR's logic is also in direct conflict with Section 15-8-111(3), MCA's, which requires that *comparable properties must represent similar properties within an acceptable proximity of the subject property* (emphasis added).

The DOR's 2008 Appraisal Manual provides the following further guidance regarding the comparable sales method:

The appraiser must select comparable and valid market transactions, and must weigh and give due consideration to all the factors significant to value, adjusting each to the subject property. The comparable sites must be used in the same way as is the subject property, and subjected to the same zoning regulations and restrictions. It is also preferable, whenever possible, to select comparable from the same or a similar neighborhood. The major adjustments will be to account for variations in time, location, and physical characteristics to include size, as well as other factors, which may significantly influence the selling price.

DOR's 2008 Appraisal Manual at 27.

The only similar characteristic the subject lots have in common with Neighborhood 012, 012A is that the lots used in Model 4 sold for significantly more than the 28 lots in Model 3. The 28 lots in Model 3 were in close proximity to the subject lots and had similar characteristics.

The only explanation given by the Department for the significantly higher prices paid for the two Colter's Run lots is that the developer marketed them as horse properties. The fact that no other lots sold in Colter's Run during the pertinent time period is telling. Other surrounding neighborhood lots to Colter's Run may not be suitable as horse properties. These lots were selling like hotcakes without being marketed as horse properties. Eventually the

bank liquidated the four subject lots for as little as \$10,000 apiece. One could speculate that the liquidation was because of bad business judgment on behalf of the developer who may not have been successful in marketing these lots. The record does not support a finding that these lots could be marketed or sold as horse properties, similar to the two anomalous lots. Thus, the DOR should not have used these two anomalous sales as a starting point or a benchmark in determining market value of the four subject lots.

### Conclusion

The DOR's map for Model 3 shows that there were numerous comparable sales within close proximity to the subject lots that share similar attributes. The Board is confident that there is sufficient evidence in the record that Model 3 is a more accurate gauge of fair market value as of July 1, 2008. The Board concludes that the Department chose to ignore the factual record and instead valued the subject lots using Model 4. This model included comparable properties that share absolutely no physical attributes. Those properties are all located at opposite ends of the County as well. They are not good comparable properties for the subject lots.

If the subject lots had been valued using the Department's Model 3 the total value of all four would be approximately \$257,083. This value, using the Department's data and formula, closely approximates the value sought by the Taxpayer (one-half of the Department's original valuation using Model 4.)

The Board finds that the Taxpayer's position is supported by a preponderance of the evidence in the record. The Board further finds and concludes that Model 3 would determine an appropriate market value for the subject lots for tax year 2014.

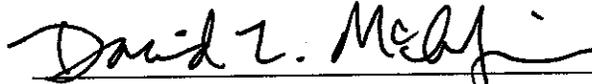
Order

IT IS THEREFORE ORDERED by the Montana Tax Appeal Board that the subject land value shall be entered on the tax rolls of Broadwater County at a 2014 tax year assessed value as determined by the use of DOR's model 3, as follows:

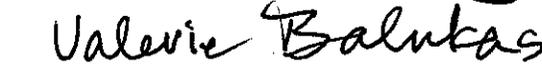
Lot 11 - GeoCode 43-1104-20-1-01-38-0000	\$54,430
Lot 12 - GeoCode 43-1104-20-1-01-36-0000	\$83,551
Lot 36 - GeoCode 43-1104-20-1-02-14-0000	\$61,417
Lot 37 - GeoCode 43-1104-20-1-02-16-0000	<u>\$57,685</u>
	<u>\$257,083</u>

Dated this 30th day of July 2015.

BY ORDER OF THE  
MONTANA TAX APPEAL BOARD

  
\_\_\_\_\_  
DAVID L. McALPIN, Chairman

  
\_\_\_\_\_  
STEPHEN A. DOHERTY, Member

  
\_\_\_\_\_  
VALERIE A. BALUKAS, Member

(SEAL)

**Notice:** You are entitled to judicial review of this Order in accordance with Section 15- 2-303(2), MCA. Judicial review may be obtained by filing a petition in district court within 60 days following the service of this Order.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 30<sup>th</sup> day of July 2015, the foregoing Order of the Board was served on the parties hereto by depositing a copy thereof in the U.S. Mails, postage prepaid, addressed to the parties as follows:

Fred Easy  
P.O. Box 34  
Helena, Montana 59624

U.S. Mail, Postage Prepaid  
 Hand Delivered  
 E-mail

Broadwater County Appraisal Office  
P.O. Box 1128  
Townsend, Montana 59644-1128

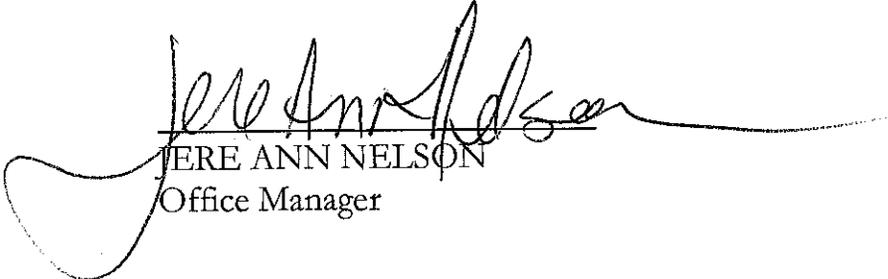
Hand Delivered  
 U.S. Mail, postage prepaid  
 Interoffice

Michele Crepeau  
Office of Legal Affairs  
Department of Revenue  
Mitchell Building  
Helena, Montana 59620

U.S. Mail, Postage Prepaid  
 Hand Delivered  
 E-mail  
 Interoffice

Nichole Brown, Secretary  
Broadwater County Tax Appeal  
Board  
c/o Planning Office  
515 Broadway  
Townsend, Montana 59644

U.S. Mail, Postage Prepaid  
 Hand Delivered  
 E-mail

  
JERE ANN NELSON  
Office Manager