

STATE OF MONTANA,
DEPARTMENT OF REVENUE,

Appellant,

v.

STEVEN BRIAN LELAND,

Respondent.

CASE No: PT-2020-5

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

STATEMENT OF THE CASE

The Montana Department of Revenue has appealed a decision made by the Gallatin County Tax Appeal Board concerning the subject property of Steven Brian Leland’s value. Taxpayer appealed to the Gallatin County Tax Appeal Board, who heard his case on December 18, 2019, and found the Taxpayer overcame the DOR presumption of correctness. The GCTAB granted the Taxpayer’s requested value.

ISSUE TO BE DECIDED

The value of the subject 11.625 acres of land will be decided. The Montana Department of Revenue has appealed to re-establish their assessed value of the land at \$270,691. The Taxpayer’s requested land value on appeal is \$1,122, and the same value was found by the County Tax Appeal Board to be market value.

PROPERTY DESCRIPTION

The subject property is located at 1142 Barnard Ridge Road, Story Hills Subdivision, Lot 30, S05, T02 S, R06 E, and includes 11.625 acres. The property geocode is 06-0799-05-2-05-10-0000. The property is in neighborhood 206.003.N Gallatin County near Bozeman, Montana.

EXHIBIT LIST

The Board admitted the following exhibits submitted by the Taxpayer:

- Ex. 1: Montana Cadastral Map showing Lots 27, 29, 30, and 31 with access roads;
- Ex. 2: Montana Cadastral Map showing the topography and elevation of the subject property area;
- Ex. 3: Montana Cadastral Summary page for Barnard Land & Livestock L.P. property, Lot 31 in the same Dept. neighborhood of 206.003.N;
- Ex. 4: Montana Cadastral Summary page for Barnard Land & Livestock L.P. property, Lot 29;
- Ex. 5: Montana Cadastral Summary page for Barnard Land & Livestock L.P. property, Lot 30;
- Ex. 6: Montana Cadastral Summary page for Barnard Land & Livestock L.P. noting All Roads location with legal description;
- Ex. 7: Montana Cadastral Summary page showing information for Lot 27 in the same Department's neighborhood of 206.003.N;
- Ex. 8: Letter from attorney Amy C. McNulty with Tarlow, Stonecipher, Weamer, & Kelly PLLC related to access issues with the Leland property. Four issues were covered: 1) No express easement to Lot 30; 2) No dedication of road leading to Lot 30; 3) Current license agreement for access across Lot 21 is revocable at any time; 4) Proposed temporary construction access license agreement can be revoked at any time;

Ex. 9: Three-page letter from Matthew Engel, the Project Manager with Barnard Land & Livestock, explaining the easement history allowing the previous owners, the Story's, access, but does not give access to future owners of the subject property or adjacent lots;

Ex. 10: Leland's copy of the License Agreement dated June 15, 2009, between Taxpayer and Barnard Land & Livestock, LP, granting temporary, revocable access by footpath;

Ex. 11: Taxpayer's Market Value Calculations page;

Ex. 12: One-page copy of Montana Code Annotated 2019, Title 15. Taxation 15-8-111 titled Appraisal-Market Value Standard- Exceptions; and

Ex. 13: Fidelity National Title Insurance Company April 29, 2019 letter to Lelands, written about the access issue with the subject property and enclosed payment of full policy limit to the Leland's noted in Condition #5 of their business policy. This resolved the claim by Lelands against the title insurance policy that indicated access to the property when they purchased it in the 1980's.

The Board admitted the following exhibits submitted by the DOR:

Ex. A: Barnard Land & Livestock purchases of neighborhood parcels, time trended to the January 1, 2018 lien date, with location map; and

Ex. B: Leland Computer Assisted Land Pricing model (CALP) pages containing two large charts and multiple pages specific to the chart.

FINDINGS OF FACT

1. To whatever extent the foregoing findings of fact may be construed as conclusions of law, they are incorporated accordingly.

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2. Taxpayer purchased the subject parcel in the 1980s with title insurance providing access to the land. *Gallatin CTAB minutes from 12.18.2019 hearing.*
3. Taxpayer submitted permits to construct a small residential dwelling in 2009. At that time, his neighboring landowner, Tim Barnard, informed him that no right of way access to the subject property had been recorded, thereby making the subject land effectively “landlocked.” *Taxpayer Ex 9.*
4. Taxpayer hired an attorney to pursue the access matter with Fidelity National Title Insurance Company, the title company from the original sale. Fidelity exercised their contractual option to pay the taxpayer the limit of the policy, thus admitting they had erred in guaranteeing taxpayer that access to the property was recorded. *Taxpayer Ex 8,13.*
5. Taxpayer received temporary, revocable access to his property from Barnard to walk to his land. *Taxpayer Ex 9,10.*
6. Taxpayer presently has no legal right to have or confer access to the subject land beyond the access by foot with revocable rights by Barnard without reason and with a 30-day notice. *Taxpayer Ex 10.*
7. Taxpayer testified he had not asked his neighbor, Mr. Barnard, to grant him access to his property by the existing roadway. *MTAB Hrg. 25:6.*
8. Access to the land is limited to the Taxpayer presently, and the marketability of the subject land is called into question without any legal access to sell with the land. *Taxpayer Ex. 8, 9.*

JURISDICTION AND STANDARD OF REVIEW

9. The Department of Revenue filed a timely appeal of the GCTAB decision to the MTAB. Therefore, this Board maintains jurisdiction to hear and decide this matter. Mont. Code Ann. §15-2-301(1)(b).
10. This Board hears CTAB 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. As such, this matter will be reviewed without merit to the GCTAB hearing and subsequent decision. *Id.*

CONCLUSIONS OF LAW

11. To whatever extent the following conclusions of law may be construed as findings of fact, they are incorporated accordingly.
12. “All taxable property must be assessed at 100 percent of its market value except as otherwise provided.” Mont. Code Ann. §15-8-111(1).
13. “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.” Mont. Code Ann. §15-8-111(2)(a).
14. 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).

15. “Sales Comparison Approach – One of the three traditional approaches to 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.” *Montana Department of Revenue Appraisal Guide*, Property Assessment Division, Valuation Date January 1, 2018.
16. “As a general rule, ... the appraisal of the DOR is presumed to be correct, and the taxpayer must overcome this presumption. The Department of Revenue should, on the other hand, bear a burden of providing documented evidence to support its assessed values.” *Carey v. DOR*, 2018 Mont. Tax App. Bd. PT-2018-9; citing *Workman v. The Department of Revenue of the State of Montana*, 1997 WL 37203; citing *Western Airlines, Inc. v. Catherine J. Michunovich, et al*, 149 Mont. 347, 428 P.2d 3 1967.
17. “If the owner of any land and improvements is dissatisfied with the appraisal as it reflects the market value of the property as determined by the department... the owner may request an assessment review by submitting an objection on written or electronic forms provided by the department for that purpose.” Mont. Code Ann. §15-7-102(3)(a).
18. This Board’s jurisdiction is limited to hearing and adjudicating matters in the current tax cycle. Mont. Code Ann. § 15-2-306. Consideration of past tax cycle refunds is under the purview of the Board of County Commissioners. Mont. Code Ann. § 15-16-603.

19. The essence of the Departments' case focuses on their effort to account for lack of access to the property by assigning an influence factor. That influence factor reduced the property value by 21%, which they argue was the most defensible method to account for the Taxpayer's lack of access to the subject property. *Dept. Ex. B.*
20. Mont. Code Ann. §15-2-306. shows the MTAB only maintains the statutory authority to accept, deny, or adjust property valuations, and order refunds for taxes paid under protest for the current property tax cycle. *Id.*

CONCLUSION

21. First, we decline to uphold the DOR's value of \$270,691, which hinged on an influence reducing value by 21% for lack of access. We find that influence to be unsupported by the evidence and testimony in this case. The DOR expert witness testified influence F was applied infrequently around Gallatin County. Evidence presented indicates that when influence factor F is used, the typical situation is for land lacking a road or lacking a passable road. DOR's own caption for the F influence factor is "unimproved location," words that do not adequately describe the total lack of access to this property. We don't find temporary foot access to be marketable to another buyer.
22. No testimony was offered attesting to any formal definition of the F influence. Without a definition or some other foundation supporting its application here, we decline to accept that influence as accurate where it is uncontested that there is no transferable legal access whatsoever. The -21% influence DOR applied seems to be used on land that has no road or a bad road to it, not land that has no legal access.

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23. Legal access is a precursor to marketability of land. Without that influence, the lack of access to this land is disregarded, and the DOR failed to carry their burden of the presumption of correctness.
24. Second, we decline the Taxpayer's request to reclassify the subject as non-qualified Ag land, which by the Taxpayers math, would value the 11.625 acres at \$1,122. That value seems artificially below market value, considering he paid over \$8,000 for the land four decades ago, and other exhibits show sales of adjoining land considerably higher value than \$1,122.
25. Further, the Board finds it surprising that the taxpayer testified he has not asked Barnard for access.
26. This Board is now left with the task of finding market value for this land. We have evidence in the record of four examples of what Barnard has been willing to pay on recent sales. Based on an average of those sales, we find a more reasonable indication of the market value of this property is \$74,682.
27. It was apparent from the evidence and testimony in this case that there is one person who could utilize this land at its highest and best use because he is the only person who controls access to the subject, Mr. Barnard. He has acquired all the land surrounding the subject in a series of recent transactions and therefore is the most likely future buyer. Based on that logical assumption, we look to what that buyer would be likely to pay the Taxpayer as the best indicator of the market value of this property.
28. The record includes several concrete examples of validated purchases of land around the subject property, all by Barnard. This information gives the Board evidence of what the land is worth. We chose to consider the four sales closest to the subject, which was, in three of those cases, adjoining the subject land. Those sales

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were also of similar land size and topography to the subject. The sales data in evidence was also time trended to the lien date, giving this Board confidence of those trended sale prices as the best indicators of value.

29. Using the average of the four Barnard purchase prices surrounding the subject, time trended to the lien date, yields an average sale price per acre of \$6,424. That is a defensible value approximating what Barnard would be likely to pay for the subject land. Applying that price to the subject 11.625 acres results in a land value of \$74,679.

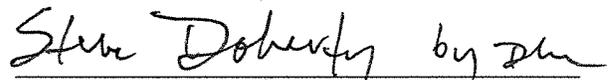
ORDER

The DOR shall value the subject property, consisting of 11.625 acres, at \$74,679.00 for Tax years 2019 and 2020.

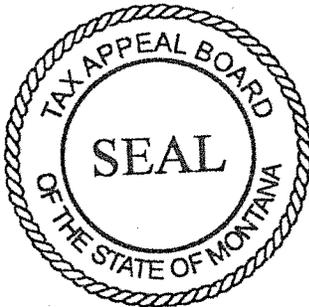
Ordered September 11, 2020.



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 Findings of Fact, Conclusions of Law, Order, and Opportunity for Judicial Review to be sent by United States Mail via Print and Mail Services Bureau of the State of Montana on September 11, 2020 to:

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Lynn Cochran, Legal Secretary
MONTANA TAX APPEAL BOARD