

BEFORE THE STATE TAX APPEAL BOARD
OF THE STATE OF MONTANA

DAN & LAURIE AVERILL FAMILY TRUST,)	DOCKET NO.: PT-2010-11
)	
Appellants,)	
)	
-vs-)	FACTUAL BACKGROUND,
)	CONCLUSIONS OF LAW,
THE DEPARTMENT OF REVENUE OF THE STATE OF MONTANA,)	ORDER and OPPORTUNITY
)	FOR JUDICIAL REVIEW
Respondent.)	

Statement of Case

Dan & Laurie Averill Family Trust (Taxpayer) appealed a decision of the Flathead County Tax Appeal Board (CTAB) relating to the Department of Revenue’s (DOR) valuation of the Taxpayer’s lake front property located on and near Flathead Lake in Flathead County, State of Montana. The Taxpayer argued the DOR overvalued the property for tax purposes, and seeks a reduction in value assigned by the DOR. At the State Tax Appeal Board (Board) telephonic hearing held on February 15, 2011, the Taxpayer was represented by Dan Averill, who provided testimony and evidence in support of the appeal. The DOR, represented by Michele Crepeau, Tax Counsel. Scott Williams, Regional Manager, Carolyn Carman, DOR appraiser, and Don Leuty, DOR appraiser, presented testimony and evidence in opposition to the appeal.

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

Issue

The issue before this Board is whether the Department of Revenue determined an appropriate market value for the subject property for tax year 2009?

Summary

Dan & Laurie Averill Family Trust is the Taxpayer in this proceeding and, therefore, has the burden of proof. Based on a preponderance of the evidence, the Board modifies the decision of the Flathead 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 evidence, verbal and documentary.
2. The subject property is a vacant 1.93 acre lot with 154 feet of Flathead Lake frontage. The following is the legal description and GEO code:

Section 01, Township 26N, Range 20W, Tract 1BD in Lot 1, Certificate of Survey CS18039-1, County of Flathead, State of Montana. GEO Code 07-3705-01-1-03-01-0000. (Exh. C.)
3. For tax year 2009, the DOR originally appraised the subject land at a value of \$1,576,800. (Carman Testimony.)
4. The Taxpayer filed a Request for Informal Review (AB-26) on September 30, 2009 with the DOR. During the AB-26 process, the DOR adjusted the property value to \$972,717, reflecting a decrease in land value of \$604,083 due to the steepness of the lot. (Carman Testimony, Exh. A.)
5. The Taxpayer filed an appeal with the Flathead County Tax Appeal Board (CTAB) on May 20, 2010, asking for a value of \$650,000 for the subject land. The following reasons were stated for the appeal:

“Property is very steep and rocky at waterline. It has no dock, no improved access, no utilities. It borders Wayfarers State Park and is bounded on one side by a chainlink fence. The property is narrow and long and the fence runs the entire length of the property.”
(Appeal Form, Exh. B.)

6. The Flathead CTAB heard the appeal on November 22, 2010 and disapproved the appeal. (Appeal Form, Exh. B.)
7. Mr. Averill is a real estate broker with over 40 years’ experience. He operates four real estate offices with approximately 50 agents in the Flathead area. (Averill Testimony.)
8. Mr. Averill submitted an outline listing the attributes of the subject property. He also described deficiencies which he considered a detriment to the value, such as steep rocky grade, limited access to building site, dock permitting and placement, and water and sewer concerns. (Averill Testimony, Exh. 1.)
9. Mr. Averill outlined several properties in the area he considered more comparable to the subject property than those presented by the DOR. (Averill Testimony, Exh. 1.)
10. The DOR used a Computer Assisted Land Pricing model (CALP) to value the subject property. A CALP model determines a property value based on the sales of land in the nearby area. The CALP derived a land value for the subject property of \$1,168,000. The CALP in this instance is based on 22 lake frontage land sales. The CALP sales and the subject property are located in Neighborhoods 300.1, 300.7, 300.8, 300.B, 300.E, 881, and 855, which are geographic areas designated by the DOR as having similar characteristics for purposes of valuation. Based on the CALP, the DOR established a standard waterfront lot size of 100 feet by 300 feet and set a front foot value of \$8,980 per foot for the first 100 linear feet of waterfront property and \$5,000 a linear foot for any residual footage (any lot with over

100 feet of lakeshore.) In this case, after the filing of the AB-26, the DOR calculated a 20% influence deduction based on unfavorable lot characteristics, which resulted in a reduced lot value of \$934,400. (Williams Testimony, Exhs. H , I and J.)

11. To arrive at the final assessed value of \$972,717, the DOR added \$38,317 for .938 acres in excess of the typical 100 feet by 300 feet waterfront lot value of \$934,400. (Williams Testimony, Exhs. H, I and J.)
12. The DOR provided a comparable sales report showing five properties with similar attributes and located near the subject property to support its valuation. (Carman Testimony, Exhs. D, E and F.)

Principles of Law

1. The State 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. For the taxable years from January 1, 2009, through December 31, 2014, all property classified in §15-6-134, MCA, (class four) must be appraised at its market value as of July 1, 2008. (ARM 42.18.124(b).)
5. Residential lots and tracts are valued by the Department of Revenue through the use of CALP models. Homogeneous areas within each county are geographically defined as neighborhoods. The CALP models reflect July 1, 2008, land market values. (ARM 42.18.110(7).)

6. 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, Board Discussion and Conclusions of Law

The Board must determine, based on a preponderance of the evidence, whether the DOR set an appropriate valuation for the subject property for tax year 2009. As a general rule, the appraisal of the Department of Revenue is presumed to be correct and the Taxpayer must overcome this presumption. The Department of Revenue should, however, bear 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).

The Department is required to value all property at 100% of market value and does this by using mass appraisal methodologies. In this case, the DOR used a CALP model based on 22 Flathead Lake water-front land sales. From this sample, the Department calculated a value for the subject property based on the front-foot method for valuation – essentially valuing the property based on the number of feet of waterfront. (*See* EP 10.) During the informal review of the property, the department lowered the initial value by 20% to reflect unfavorable lot characteristics such as rocky shoreline and steepness of the lot.

The Taxpayer argues the subject property is not as desirable as other property in the area because of several serious site limitations. These limitations range from road access to a reasonable building site. Further, the property suffers from significantly impaired access to the water from the building site. The Taxpayer also argues that the cost to bring utilities to the site

is restrictive and prohibitively expensive based on the location of the subject property and the steep and rocky terrain.

The Board finds the Taxpayer has supplied substantial evidence supporting the claim that the property suffers from several deficiencies that lower its marketability. For example, the lake front property is very steep and rocky and suffers from restricted access to building site opportunities. The property does have lake frontage and is large enough for future building, however, the access is limited and somewhat cost prohibitive due to the extremely steep, rocky cliff. The Board further finds that, even though the DOR did support the values assessed in accordance with Montana law, they did not adequately take into account the subject property's deficiencies.

Thus the Board concludes that the present value assigned to the subject property is not justified by the evidence. We therefore order that the subject property be valued at the Taxpayer's requested value of \$650,000.

Order

IT IS THEREFORE ORDERED by the State Tax Appeal Board of the State of Montana that the subject property value shall be entered on the tax rolls of Flathead County at a 2009 tax year value of \$650,000.

Dated this 24th day of February, 2011.

BY ORDER OF THE
STATE TAX APPEAL BOARD

/s/ _____
KAREN E. POWELL, Chairwoman

(S E A L)

/s/ _____
DOUGLAS A. KAERCHER, Member

/s/ _____
SAMANTHA SANCHEZ, Member

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 t his Order.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 25th day of February, 2011, 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:

Dan & Laurie Averill Family Trust	<input checked="" type="checkbox"/> U.S. Mail, Postage Prepaid
P.O. Box 275	<input type="checkbox"/> Hand Delivered
Big Fork, Montana 59911-0275	<input type="checkbox"/> E-mail

Scott Williams	<input checked="" type="checkbox"/> U.S. Mail, Postage Prepaid
Carolyn Carmen	<input type="checkbox"/> Hand Delivered
Flathead County Appraisal Office	<input type="checkbox"/> E-mail
100 Financial Drive, Suite 210	<input type="checkbox"/> Interoffice
Kalispell, MT, 59901	

Michelle R. Crepeau	<input type="checkbox"/> U.S. Mail, Postage Prepaid
Office of Legal Affairs	<input type="checkbox"/> Hand Delivered
Department of Revenue	<input type="checkbox"/> E-mail
Mitchell Building	<input checked="" type="checkbox"/> Interoffice
Helena, Montana 59620	

Norma Weckwerth, Secretary	<input checked="" type="checkbox"/> U.S. Mail, Postage Prepaid
800 South Main	<input type="checkbox"/> Hand Delivered
Flathead County Tax Appeal Board	<input type="checkbox"/> E-mail
Kalispell, Montana 59901	

/s/ _____
DONNA EUBANK
Paralegal