

BEFORE THE STATE TAX APPEAL BOARD
OF THE STATE OF MONTANA

BARBARA BAKER,)	DOCKET NO.: PT-2009-147
)	
Appellant,)	
)	
-vs-)	FACTUAL BACKGROUND,
)	CONCLUSIONS OF LAW,
)	ORDER and OPPORTUNITY
DEPARTMENT OF REVENUE)	FOR JUDICIAL REVIEW
OF THE STATE OF MONTANA,)	
)	
Respondent.)	

Statement of the Case

Barbara Baker, Taxpayer, brings this appeal challenging the value placed on her property by the Department of Revenue (DOR) at 2092 Houston Drive, Whitefish. The appeal from the decision of the Flathead County Tax Appeal Board (CTAB) was heard on the record with both sides submitting written materials to support their valuations. Taxpayer represented herself, and the DOR was represented by Scott Williams, regional manager of Region 1 which includes Flathead County.

Issue

The issue in the case is whether the DOR correctly valued the Taxpayer's property. Barbara Baker is the Taxpayer in this proceeding and, therefore, has the burden of proof.

Summary

The Board, having fully considered the testimony and exhibits from the record made before the Flathead County Tax Appeal Board and all matters presented to this Board, affirms the decision of the Flathead County Tax Appeal Board.

Evidence Presented

1. The subject property is a lot with a house on Whitefish Lake, S23, T31N, R22W, Lot 016, Geocode 07-4292-23-1-18-05-0000, owned by Barbara Baker. (DOR Exhibit A.)
2. The property was appraised by the DOR at \$1,891,067 and the Taxpayer filed an AB-26 request for an informal review stating: “The owner does not believe that the Market/Productivity Value of the 2009 Assessment Notice represents fair market value of the property as of July 1, 2008. The owner is in the process of obtaining comparable sales and other information to establish an accurate fair market value and would like to schedule an informal review meeting to present such information.”(AB-26, Oct 02, 2009.)
3. At the same time, Taxpayer appealed the valuation of another lot she owns, Lot #15, which is adjacent to Lot #16 and the same size and topography, but is vacant land. As a result of the informal review, the value of Lot #15 was reduced from \$987,775 to \$792,475. (Lot 15 AB-26, Oct 2, 2009.)
4. Following a review of the appraisal, the value of Lot #16 was reduced \$291,345 to \$1,599,722 on March 18, 2010, of which \$1,366,205 was

assigned to the land and \$233,517 to the building. (Property Tax Appeal Form.)

5. Don Leuty, DOR appraiser, testified at the CTAB hearing that he reduced the value of Lot #15 because he treated the two lot as one, with Lot 16 as the primary lot and Lot #15 as residual property. If they were two separate lots, they would both be valued at the Lot #16 value. Appraiser Leuty also testified that he applied a 15% negative influence factor to Lot #16 because of the steepness of the lot. Lot #16 was valued at \$18,261 per front foot. Lot #15 was valued at \$10,566 per front foot. (CTAB Transcript, pp. 11-12.)
6. Taxpayer then filed a notice of appeal with the Flathead County Tax Appeal Board, stating again that she did not believe the DOR determination was the fair market value for Lot #16. She did not appeal the value of Lot #15 or the building on Lot 16. She asked for a reduction in the value of the land from \$1,366,205 to \$792,475, the same value given for Lot #15 following the AB-26 review. (Property Tax Appeal Form.)
7. The DOR presented a Land Valuation Model for Neighborhood 250 lakefront properties showing 53 sales between 2004 and 2008 from which the DOR developed the base rate value of \$19,724 per front foot for the base size of 100 feet and \$13,020 per front foot for land in excess of 100 feet. (DOR Exhibit G.)
8. The DOR also presented a set of land sale comparisons, showing five sales of properties comparable to the subject property, all but one of which had a higher value per front foot than the subject property. (DOR Exhibit D.)

9. The CTAB denied Taxpayer's appeal, affirming the DOR value.) Property Tax Appeal Form, May 6, 2011.)
10. Taxpayer filed a timely appeal to this Board, again contesting the value of Lot #16, citing the steepness of the property and distance from the house to the lake, as a result of which, the property has "limited recreational value." Ms. Baker's appeal also states that Lot 16 "has 15 foot side lot (building) set backs" and "has home located within set backs (side)." (STAB Appeal, Nov 2, 2011.)
11. Ms. Baker claimed that the comparable properties used by the DOR had flatter terrain and better access to the lake. She also submitted four properties she considered to be more comparable to hers. The first, 440 Parkway, is owned by the Pettinatos, has a house close to the water and is valued at \$11,381 per front foot. The second is Lot #15, her adjacent lot, which she states has the same topography and size and is therefore a good comparable. Two other properties, 2072 Houston Drive and 2108 Houston Drive, both sold after the statutory valuation date of July 1, 2008. Taxpayer argued that the land values were the same in June, 2008 and Fall, 2011, when the sales occurred, as they were in 2008. (STAB Appeal, Nov. 2, 2011.)
12. Scott Williams, Regional Manager for the DOR, submitted an affidavit addressing the claims on appeal. He pointed out that the steepness of the property does not prevent access to the lake as the path to the water and the dock attest. The water frontage is deep water with a pebble beach and he submitted that the subject property is one of the better recreational properties on the lake. (DOR Exhibit J.)

13. Mr. Williams pointed out that the Pettinato property is much smaller than the subject lot, could not accommodate a house any larger than the small one now on it, or even a front deck on the existing house, due to zoning and lot size restrictions. The water frontage is “mucky” and shallow and difficult for boats and swimming. He considers it one of the least desirable lots on the lake. (DOR Exhibit J.)
14. Mr. Williams states that Lot #15 is not an appropriate comparable because it was consolidated with Lot #16 “for tax purposes because of a prior determination several years ago that the subject property dwelling encroaches upon Lot #15. Because they are combined, Lot #15 is valued entirely at residual pricing. If the Board somehow concluded that the lots should not be combined and that both lots should be valued equally, then Lot #15 should be increased to include primary valuation.” (DOR Exhibit J.)
15. Mr. Williams also stated that the remaining two lots, sold after the valuation date, are not really comparable. The property at 2072 Houston Drive is so steep that there was warning tape lining the lot at the time the appraiser reviewed the sale. The property at 2108 Houston Drive is not located on the lake but has 57 feet of shared frontage. (DOR Exhibit J.)
16. Mr. Williams also stated that the owner of a neighboring property on Houston Drive submitted an independent appraisal of that property showing a value of \$20,884 per front foot as of the July 1, 2008 valuation date, considerably more than the subject property. (DOR Exhibit J.)

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. The same method of appraisal and assessment shall be used in each county of the state to the end that comparable property with similar true market values and subject to taxation in Montana shall have substantially equal taxable values at the end of each cyclical revaluation program hereinbefore provided. (§15-7-112, MCA.)
5. 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 July 1, 2008, land market values. (ARM 42.18.110(7).)
6. The development of sales comparison models using Property Valuation Assessment System (PVAS) is a requirement for property valuation during the reappraisal cycle. (ARM 42.18.110(8).)
7. For the taxable years from January 1, 2009, through December 31, 2014, all class four property must be appraised at its market value as of July 1, 2008. (ARM 42.18.124(b).)

Board Discussions and Conclusions of Law

As the appellant, the Taxpayer in this case bears the burden of proving that the value set by the DOR is incorrect and in this case she has failed. Ms Baker argues the property is too steep for full recreational use and has presented comparable properties that are not really comparable. The evidence demonstrates the Pettinato property is quite small, not steep and the house is close to the lake, unlike the subject property. Evidence shows the subject property is large, steep and the house is 200 feet from the lake. Two additional properties she presents sold after the valuation date and so, by law, cannot be used in valuing her property even if they were comparable, which the evidence controverts. Finally, she suggests her own lot (Lot #15) as a comparable property but it has been valued as residual property to Lot #16 and is therefore not a comparable property.

It is also worth noting that the evidence from the Taxpayer differs from that of the DOR as to the reason the two lots are combined for tax purposes. The DOR believes the Lot #16 building encroaches on Lot #15 but the Taxpayer says the house on Lot #16 is built within the legal setbacks. The question of whether Lot #15 can be sold separately or whether it is legally combined into one property was raised at the CTAB hearing but not resolved because the value of Lot #15 was not in issue, but it is clear that the front-foot value assigned to Lot #15 is not appropriate for Lot #16.

The accuracy of the land valuation model upon which the DOR based the value was not disputed. The Taxpayer claims that the comparable properties presented by the DOR were not comparable in the steepness of the lots, but the Taxpayer has already received a negative influence reduction of

\$291,345 (*See* EP4) due to the steepness of the lot and no evidence was presented showing this is inadequate.

The holding of the Flathead County Tax Appeal Board is affirmed.

Order

IT IS THEREFORE ORDERED by the State Tax Appeal Board of the State of Montana that the subject property shall be entered on the tax rolls of Flathead County at the value determined by the Department of Revenue and affirmed by the Flathead County Tax Appeal Board.

Dated this 17th day of November, 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 this Order.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 17th day of November, 2011, a copy of the foregoing order was served on the parties hereto by placing a copy in the U.S. Mail and addressed as follows:

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