

-BEFORE THE STATE TAX APPEAL BOARD  
OF THE STATE OF MONTANA

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BENTON C. & DOREEN N. CAVIN,	)	DOCKET NO.: PT-2009-100
	)	
Appellants,	)	
	)	
-vs-	)	FACTUAL BACKGROUND,
	)	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**

Benton C. & Doreen N. Cavin (Taxpayers) appealed a decision of the Flathead County Tax Appeal Board (CTAB) relating to the Department of Revenue’s (DOR) valuation of their property located at 2130 Houston Drive, Whitefish, Montana. The Taxpayers argue the DOR overvalued the property for tax purposes, and seek a reduction in value assigned by the DOR. The matter was heard before the State Tax Appeal Board on the record without objection.

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, 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

Benton C. and Doreen N. Cavin are the Taxpayers in this proceeding and, therefore, have the burden of proof. Based on a preponderance of the evidence, the Board upholds the decision of the Flathead County Tax Appeal Board.

### Evidence Submitted

1. Due, proper and sufficient notice was given of this matter. Both parties were afforded the opportunity to submit additional written material to the Board.
2. The subject property is 1.1 acre lot with 94 feet of Whitefish lake frontage with the following legal description:

Lot 1 of Houston Lake Shore Tract AMD PT, Section 23,  
Township 31 North, Range 22 West of Flathead County, State of  
Montana. DOR parcel identification GEO Code 07-4292-23-1-  
16-01-0000. (CTAB Exhs. B and C.)
3. The Taxpayers were represented at the Flathead CTAB hearing by the taxpayers Benton & Doreen Cavin and fee appraiser Don McBurney. (CTAB Sign-in Sheet.)
4. The DOR was represented at the CTAB hearing by Scott Williams, Regional Manager and Don Leuty, Appraiser. (CTAB Sign-in Sheet.)
5. For tax year 2009, the DOR originally appraised the subject property at a value of \$2,029,697 which represented a land value of \$1,904,028 and uncontested improvement value of \$125,669. (CTAB Exh. A.)
6. The DOR used a CALP (Computer Assisted Land Pricing) model to value the subject property. This resulted in the original land value of \$1,904,028. The CALP in this instance is based on 53 lake-front land sales. The CALP sales and the subject property are all located in Neighborhood 250, which is a geographic area designated by the DOR

- as having similar characteristics for purposes of valuation. In this instance, all the properties are located on Whitefish Lake with lake frontage. (CTAB Exh. F, Williams Testimony.)
7. The Taxpayers filed a Request for Informal Review (AB-26) with the DOR on October 2, 2009. During the AB-26 process, the DOR adjusted the property land value to \$1,430,558; this reflects a 25 percent decrease in land value of \$473,470 due to the steepness of the lot. (CTAB Exh. A., Leuty Testimony.) The property also has a deduction due to the fact that the lot is in excess of the standard depth of a lot for the neighborhood. (CTAB Exh. D, Leuty Testimony.)
  8. The Taxpayers filed an appeal with the Flathead CTAB on April 16, 2010, and submitted a packet of information detailing their objection to the DOR's assessment. (CTAB Exh 1.) The Flathead CTAB heard the appeal on June 30, 2010.
  9. The Taxpayers argued for a value of between \$500,000 to \$1,000,000 for the land based on calculations from properties they believe are more comparable than the DOR's, as well as the experience of appraiser Mr. McBurney. (Appeal Form, CTAB Exh. 1, Cavin Testimony.)
  10. Mr. McBurney argues that the Cavins could not see their own lakeshore from their house, merely the lakeshore of other properties, and thus, the appropriate comparable properties would be view properties, not lake front properties. (McBurney testimony.)
  11. During the CTAB hearing, the DOR submitted a Land Sales Comparison of four properties which the Department's appraiser considered most comparable to the subject to verify the values set by the CALP. (CTAB Exh. E-2, Leuty CTAB Testimony.)

12. The Flathead CTAB upheld the DOR's value of \$1,430,558 for the subject land. (Appeal Form.)
13. The Taxpayer appealed to this Board on July 30, 2010, stating:

“DOR assessment of \$1,430,558 is badly flawed. CALP analysis relies heavily on irrelevant data. All (4) DOR comparables are irrelevant. DOR adjustment of 25% was not supported. The Cavin/McBurney info presented is relevant and supports a conclusion for the land assessment of between \$500,000 and \$1,000,000.” (Appeal Form.)
14. The Taxpayers submitted an appraisal by Gene Lard of the subject property as of July 1, 2006, showing an estimated value of \$940,000 for the subject land. (Taxpayers' January 24, 2011 submittal, Exh. 4.)
15. The Department supplied sales data for over 50 sales in the Whitefish neighborhood between 2004 and 2007, as well as rebuttal to the Lard appraisal. (DOR Exhs. B, D.)
16. Both parties submitted additional argument and exhibits to this Board.

#### **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 class four property must be appraised at its market value as of July 1, 2008. ( ARM 42.18.124(b).)

5. For an independent appraisal to be considered, the taxpayer or the taxpayer's agent must meet the following requirements:
  - (a) submit a signed original long-form narrative appraisal, performed by an appraiser licensed by the state of Montana, or an appraiser who has been certified by a nationally recognized appraisal society or institute, to the local department office in the county where the property is situated;
  - (b) have a valuation date within six months of the base-year valuation date for the appraisal required in (1) (a), or be adjusted by the department or the appraiser who performed and prepared the narrative appraisal to reflect changes in market conditions between the appraisal date and the base-year valuation date. (ARM 42.20.455(1).)
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.)

### **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 Taxpayers 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 DOR appraised the subject property using standard methodologies, including a computer assisted land pricing model, to determine the value of the property. At the CTAB hearing, the DOR appraiser testified he reviewed the subject property and determined there were some deficiencies, such as a steep

slope to the waterfront, which required an adjustment. He testified the property was very attractive and in a good location, in line with similar Whitefish Lake properties, and therefore, he considered the adjusted DOR values to be correct. We find the DOR appraiser and the evidence presented to be credible, and we find no substantial errors in the DOR's valuation.

Further, we find that the Taxpayers failed to provide evidence that the value set by the DOR is not market value. First, the Taxpayers and their witness Mr. McBurney attempt to argue that their property is not true "lakefront" but should be valued as view property because the Taxpayers cannot see their own beach from their patio. This argument defies logic. The Taxpayers own 94 feet of unrestricted Whitefish lake frontage, which is directly accessible from their residence. The Department, however, discounted the land value by 25% for the fact that the access to the lakefront is steep. This reduction is, in fact, a greater deduction than is generally made by the Department for waterfront properties with steep slope access that imposes limitations on the use of the property. *See e.g. Clark v. DOR*, 2010 Mont. Tax LEXIS 41 and *Eve v. DOR*, 2011 Mont. Tax LEXIS 11.) The evidence presented to this Board does not demonstrate that any greater reduction is necessary or proper.

Second, the Taxpayers attempt to contradict the DOR's value by submitting an appraisal with a 2006 valuation date produced by Gene Lard (Taxpayer Exh. 4). All taxable class four properties in Montana, however, must be appraised at its market value as of July 1, 2008 for the current appraisal cycle. Even though this appraisal was an original long-form narrative appraisal, performed by a licensed appraiser, this Board cannot give full weight to evidence of valuation that was not done within six months of the valuation date July 1, 2008 or time trended to that date. (*See* POL 4 & 5.) Evidence clearly

demonstrates that many sales occurred in the Whitefish area, and those sales prices continue to increase through at least 2007. (DOR Exh B.) Further, several of the sales in the 2006 appraisal resold later during the same reappraisal cycle for higher prices which were not included in the Lard appraisal. (DOR Exh. D.)

Property values fluctuate with the economic climate and the only way to achieve statewide equalization is to use the same valuation date for all properties being valued. Taxpayers argue that the Department's values were time trended to 2006, but Taxpayers misapprehend the time trending of the computer assisted land pricing model. Rather, the Department's sales data demonstrates a significant increase in valuation through 2007. By using a standard lien date for tax purposes, all taxpayers experience the same increase or decrease and share the tax burden equally. Therefore, we do not consider Taxpayers' appraisal as valid to set market value, as the comparable sales used are well before the valuation-date in question, and do not fully reflect the valuation in the Whitefish area.

We note that a review of the evidence demonstrates that the value for the improvements for the subject property appear to be significantly below market value. The property record card shows a multi-story three bedroom, two bath house with an effective year built of 1995. The property has an excellent condition, desirability and utility (CDU) rating, and is listed in good condition, which is reflected in the accompanying photos. There are two small outbuildings on the property. The total improvements are valued at \$125,669. (CTAB DOR Exh. B.) It is the experience of the Board that such a value for the subject improvements is below market value. By law, the Department must determine a total value for the subject property; both land value and

improvement value. Because the improvement value appears well below market, and the land value is set at market value, the Taxpayers are in no way injured by the total market value set on this property.

We recognize that the Taxpayers have owned this property for many years, and they argue that the valuation increases provide an undue burden on them. While this Board recognizes that increased taxes may be a financial burden, that fact does not, however, have any impact on the market value of the property. The Legislature enacted statutory provisions to mitigate the effects of large tax increases for certain taxpayers, but such provisions are not relevant to the valuation issue presented in this matter.

On a procedural note, the Taxpayers filed objections to certain materials provided to this Board by the Department of Revenue. This Board denies the Taxpayers' objection, and has deemed all of the material properly submitted as part of the record in this matter pursuant to §15-2-301(4), MCA.

The Board finds the evidence presented by the DOR supports the values assessed. This Board also concludes the Taxpayers have not provided evidence that the DOR appraised value for July 1, 2008 is incorrect. It is the opinion of this Board that the assessed value set by the DOR and upheld by the Flathead County Tax Appeal Board be affirmed.

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**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 \$1,430,558 as determined by the Department of Revenue and upheld by the Flathead County Tax Appeal Board.

Dated this 11<sup>th</sup> day of April, 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 11th day of April, 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:

Benton and Doreen Cavin	<input checked="" type="checkbox"/> U.S. Mail, Postage Prepaid
P.O. Box 965	<input type="checkbox"/> Hand Delivered
Whitefish, Montana 59937-0965	<input type="checkbox"/> E-mail

Scott Williams	<input checked="" type="checkbox"/> U.S. Mail, Postage Prepaid
Don Leuty	<input type="checkbox"/> Hand Delivered
Flathead County Appraisal Office	<input type="checkbox"/> E-mail
100 Financial Drive Suite 210	<input type="checkbox"/> Interoffice
Kalispell, Montana 59	

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
Flathead County Tax Appeal Board	<input type="checkbox"/> Hand Delivered
800 South Main	<input type="checkbox"/> E-mail
Kalispell, Montana 59901	

/S/ \_\_\_\_\_  
DONNA EUBANK  
Paralegal