

BEFORE THE STATE TAX APPEAL BOARD  
OF THE STATE OF MONTANA

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RICHARD O. and RUBY K. DEMPSEY,	)	DOCKET NO.: PT-2009-74
	)	
	)	
Appellants,	)	
-vs-	)	FACTUAL BACKGROUND,
	)	CONCLUSIONS OF LAW,
THE DEPARTMENT OF REVENUE OF THE STATE OF MONTANA,	)	ORDER and OPPORTUNITY FOR JUDICIAL REVIEW
	)	
Respondent.	)	

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**Statement of Case**

Richard O. and Ruby K. Dempsey (Taxpayers) appealed a decision of the Lewis and Clark County Tax Appeal Board (CTAB) relating to the Department of Revenue’s (DOR) valuation of their property identified as Lot 008, Block 002, Lemire Acres, Section 1, Township 14 North, Range 08 West, Lewis and Clark County, State of Montana. The Taxpayers argue the DOR overvalued the property for tax purposes, and they seek a reduction in the value of the land assigned by the DOR. At the State Tax Appeal Board (Board) hearing held on August 25, 2010, the Taxpayers were represented by Richard Dempsey, providing testimony and evidence in support of the appeal. The DOR, represented by Michelle Crepeau, Tax Counsel; Terry Swope, Area Manager and Brian Connolly, DOR appraiser, presented testimony and evidence in opposition to the appeal.

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

### Issue

The issue before this Board is whether the Department of Revenue erred in valuing the subject property for tax purposes for tax year 2009?

### Summary

Richard and Ruby Dempsey are the Taxpayers in this proceeding and, therefore, have the burden of proof. Based on a preponderance of the evidence, the Board modifies the decision of the Lewis and Clark 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 38,768 square feet or .889 acres, with the following legal description:

Lot 008, Block 002, Lemire Acres, Section 1, Township 14 North, Range 08 West, Lewis and Clark County, State of Montana. (Exh. A.)
3. For tax year 2009, the DOR appraised the subject properties at a value of \$90,814, \$59,768 for the land and \$31,046 for the improvements (as determined through the informal appeal process). (Exh. A.) The improvement values are not at issue in this matter.
4. The Taxpayers filed a Request for Informal Review (AB-26) on August 31, 2009 (Appeal Form.)
5. The DOR adjusted the improvement value, but did not adjust the land value. (Exh. A.)
6. The Taxpayers are asking for a value on the land of \$34,000. (Appeal Form.)

7. The Taxpayers filed an appeal with the Lewis and Clark County Tax Appeal Board (CTAB) on March 18, 2010, stating: “Land overvalued.”
8. The Lewis and Clark CTAB heard the appeal on May 25, 2010, and upheld the DOR land value for the subject property. (Appeal Form.)
9. The Taxpayers appealed to this Board on June 9, 2010, stating:

“Did not give any weight to the fee appraisal of our property. I think the board has erred in its decision.” (Appeal Form.)
10. Richard Dempsey was a DOR appraiser for more than 18 years and retired from the Department in 2006. (Dempsey Testimony.)
11. The Taxpayers submitted a fee appraisal completed by Cornerstone Appraisal Services as of March 13, 2010 valuing only the land. The appraisal gave a weighted estimate of \$34,000 to the value of the land. (Exh. 1.)
12. The Cornerstone Appraisal used five comparable sales to value the subject property. Three of the sales occurred between September and November, 2009 and the other two sales in August of 2006. (Exh. 1.)
13. The DOR used a CALP (Computer Assisted Land Pricing) to value the subject land. This resulted in a land value for the subject property of \$59,768. (Exh. A.)
14. The CALP in this instance is based on eight vacant land sales, each less than one acre in size, located near the small town of Lincoln. The CALP sales and the subject property are all located in Neighborhood 661-1, which is a geographic area designated by the DOR as having similar characteristics for purposes of valuation. Because of the small size of the lots, the values were calculated by the square foot. (Exh. B.)
15. The DOR also supplied a CALP model which was based on 50 vacant land sales, over one acre in size, in the same neighborhood as the subject property. The DOR used the acre model to arrive at a “rate of change” which is used to time-trend all sales to the valuation date of July 1, 2008.

- (Swope Testimony, Exh. C.) The base rate per acre was established as \$45,300.
16. Based on the square-foot CALP, the DOR established a base rate of \$2.05 per square foot for the first 20,000 square feet and \$1.00 a square foot for any residual. (Connelly Testimony, Exh. B.)
  17. The DOR routinely provides CALP information to the county and state tax appeal board to demonstrate the predictive accuracy of DOR valuations. *See, e.g., DOR v. Wadsworth*, PT -2006-9, *DOR v. Bengala*, PT- 2006-10, *Manicke v. DOR*, PT 2005-5, *Bauman v. DOR*, PT- 2003-127, *DOR v. Forney*, PT-1997-125, *Kohl v. DOR*, PT-1993-385.
  18. The Taxpayers questioned the DOR as to why there is a difference in value between the square-foot model and the acre model. The Taxpayers' value under the acre model would be \$15,000 less than the square-foot model. (Dempsey Testimony, Exhs. B & C.)
  19. The DOR claims smaller tracts of land, in this case less than one acre for the square-foot model, sell differently in the market than tracts of land one acre and larger such as in the acre model. (Swope Testimony.)
  20. The Taxpayers argue the “R-squared”<sup>1</sup> value in this case of 20.73%, on the square-foot model, is less accurate than the acre model of 76.24%. (Dempsey Testimony, Exhs. B & C.)
  21. DOR area manager Swope testified, because of the limited sales of lots less than one acre in the Lincoln area, the DOR used a “rate of change” from the acre model CALP to time-trend the comparables, instead of relying on the square-foot model. He also testified the lack of sales and

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<sup>1</sup> The “R2” or “R squared” is the coefficient of determination in a CALP model. The R<sup>2</sup> is a measure of the predictive accuracy of the model. R<sup>2</sup> values during the last cycle ranged from 0 to 1. The closer the value is to 1, the more reliable the model's estimate of value. (*Manicke v. DOR*, PT-2005-5, 08/31/06, page 14.) This same measure of predictive accuracy is often referenced as a percentage. The closer the value is to 100%, the more reliable the value is to the model's estimate of value.

- an inaccurate “rate of change” may account for the low “R-squared” in the square-foot CALP model. (Swope Testimony, Exhs. B & C.)
22. During the hearing the Taxpayers submitted information on the eight properties used in the square-foot CALP model from the Montana State Cadastral Mapping website showing inconsistencies between the square-foot CALP model and the information provided to the public.  
(Dempsey Testimony, Exh. 2.)
  23. Area manager Swope testified the Montana Cadastral Mapping website is maintained by the Department of Administration and not the DOR. The information used on the website may reflect a more current appraisal of the property and not necessarily the one used during the appraisal cycle. Swope testified the DOR cannot assure the accuracy of the information posted on the Cadastral website. (Swope Testimony.)
  24. This Board requested post-hearing submissions from the DOR containing all of the Realty Transfer Certificates (RTC) and other documentation that supports the square-foot CALP. (DOR Post-Hearing Submission.)
  25. The Taxpayers responded in a letter to the DOR’s post-hearing submissions. (Taxpayers’ Letter dated September 27, 2010.)

### **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. 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).)
5. The appraised value supported by the most defensible valuation information serves as the value for ad valorem tax purposes. (ARM 42.18.110(12).)
6. 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).)
7. For an independent appraisal to be considered must have a valuation date within six months of the base-year valuation date or be adjusted by the DOR 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)(b).)
8. 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 land for tax year 2009. In this instance, we will review whether the DOR properly valued Taxpayers' property for tax purposes.

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 DOR is charged with appraising the property at full market value pursuant to §15-8-111, MCA. The most appropriate way to appraise property is to use the actual sale of the property or to extract data from the market, such as other sales of comparable properties. The DOR used two CALP models based on verified land sales in Neighborhood 661-1, which includes the subject property. In this case, the square-foot CALP model indicated a base rate of \$2.05 per square foot for the first 20,000 square feet and \$1.00 a square foot for any residual. Thus, the subject land was valued at \$59,768 for the 38,768 square feet. All the CALP sales were vacant land, occurred prior to the assessment date of July 1, 2008, and were within Neighborhood 661-1.

The Taxpayers argues the square-foot CALP is less reliable due to the low “R-squared” than the acre model. To further their argument, the Taxpayers commissioned a fee appraisal, completed by Cornerstone Appraisal Service. They believe this appraisal reflects a more accurate market value than the DOR.

The DOR contends the low “R-squared” in the square-foot CALP may be accounted for by the limited sales and “rate of change” and consider the CALP itself to be accurate. The DOR also contends the fee appraisal submitted by the Taxpayers is flawed because three of the comparable sales in the appraisal were significantly beyond the valuation date of July 1, 2008 and the other two sales were not time trended to this date.

The DOR claims this property is located in a very desirable area and has sustained a high rate of appreciation due to its proximity to recreational opportunities. The DOR also testified the evidence presented in the CALP is a long standing appraisal method and the DOR used the information it had to arrive at an accurate value.

This Board recognizes a higher “R-squared” generally reflects a more accurate CALP and as long as an appraiser recognizes how the regression analysis model works, and tests the conclusions, there is no reason not to consider the output credible and reliable. In this case, however, the acre model has considerably more data than the square-foot model. In fact, the DOR appraiser used the time-trending data from the acre model to supplement the square-foot model. Furthermore, the subject property is very close to one acre in size and the DOR evidence is inconclusive in determining that just because a property is less than one acre in size that it will sell for more than a one acre parcel. Smaller lots do sell for more per square foot than larger ones but the DOR here claims the .889 acre of the subject property is worth 26 percent more than it would be worth if it were a full acre. This illogical result suggests the square-foot CALP is not reliable for lots close to one acre.

This Board also recognizes it is the right of a taxpayer to provide an independent appraisal as long as it follows the rules outlined in ARM 42.20.455(1)(b). Property values fluctuate with the economic climate and the only way to achieve statewide equalization is to use the same date for all properties being valued. Thus, all taxpayers experience the same increase or decrease and share the tax burden equally. Because the Taxpayers’ appraisal uses data that is significantly outside of the appraisal time-frame or was not time-trended, we cannot consider it as credible evidence of the subject property.

Therefore, this Board concludes the present value assigned to the subject property by the DOR is not justified by the evidence. However, the DOR evidence did support the use of the acre model CALP to value the subject property and the Taxpayer submitted no evidence that would dispute the DOR’s calculations on this CALP.

Thus it is the opinion of this Board the assessed value be determined using the acre model CALP for Neighborhood 661-1 and the decision of the Lewis and Clark County Tax Appeal Board is modified.

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**Order**

IT IS THEREFORE ORDERED by the State Tax Appeal Board of the State of Montana that the subject property land value shall be entered on the tax rolls of Lewis and Clark County at a 2009 tax year value of \$44,490, modifying the decision of the Lewis and Clark County Tax Appeal Board.

Dated this 18th of October, 2010.

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 19th day of October, 2010, 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:

Richard and Ruby Dempsey	<input type="checkbox"/> U.S. Mail, Postage Prepaid
P.O. Box 115	<input type="checkbox"/> Hand Delivered
Lincoln, Montana 59639	<input type="checkbox"/> E-mail

Terry Swope	<input type="checkbox"/> U.S. Mail, Postage Prepaid
Brian Connolly	<input type="checkbox"/> Hand Delivered
Lewis & Clark County Appraisal Office	<input type="checkbox"/> E-mail
P.O. Box 1722	<input type="checkbox"/> Interoffice
Helena, MT, 59624-1722	

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 type="checkbox"/> Interoffice
Helena, Montana 59620	

Mike Noble, Chairman	<input type="checkbox"/> U.S. Mail, Postage Prepaid
Lewis & Clark County Tax Appeal	<input type="checkbox"/> Hand Delivered
Board	<input type="checkbox"/> E-mail
1519 Ohio	
Helena, Montana 59601	

/s/ \_\_\_\_\_  
DONNA EUBANK  
Paralegal