

BEFORE THE STATE TAX APPEAL BOARD
OF THE STATE OF MONTANA

EAGLE COVE 1, L.L.C.,)	DOCKET NO.: PT-2009-93
)	
Appellant,)	
-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

Eagle Cove 1, L.L.C. (Taxpayer) appealed a decision of the Flathead County Tax Appeal Board (CTAB) relating to the Department of Revenue’s (DOR) valuation of its property identified as 700 Lutheran Camp Road, Section 33, Township 26N, Range 20W, 17108-R, Tract 1AAA IN L 1, of Flathead County, State of Montana. The Taxpayer argues 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) hearing held on September 17, 2010, the Taxpayer was represented by Greg Bain and Clare LaMeres, who provided testimony and evidence in support of the appeal. The DOR, represented by Michele Crepeau, Tax Counsel, Scott Williams, Regional Manager, Michael Forster, DOR appraiser, and Dan Lapan, 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

Eagle Cove 1, L.L.C. is the Taxpayer in this proceeding and, therefore, has the burden of proof. Based on a preponderance of the evidence, the Board affirms 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 irregularly shaped two-acre lot with 232 feet of Flathead Lake frontage, with the following legal description:

700 Lutheran Camp Road, Section 33, Township 26N,
Range 20W, 17108-R, Tract 1AAA IN L 1, of Flathead
County, State of Montana. (Exhs. A and C.)
3. For tax year 2009, the DOR originally appraised the subject property at a value of \$3,753,966: \$2,227,597 for the land and \$1,526,369 for the improvements. The improvement values are not at issue in this matter. (Appeal Form.)
4. The DOR used a CALP (Computer Assisted Land Pricing) model to value the subject property. This resulted in a land value for the property of \$2,227,597. The CALP in this instance is based on 29 lake-frontage land sales. The CALP sales and the subject property are all located in the Somers/Lakeside Neighborhood 800, which is a geographic area designated by the DOR as having similar characteristics for purposes of

- valuation. Based on the CALP, the DOR established a front foot value of \$8,965 per foot for the first 100 linear feet and \$7,653 a linear foot for the residual feet (for any lot with over 100 feet of lakeshore.) A depth factor is calculated for those properties either larger or smaller in depth than the average 300 foot lot. (Williams Testimony, Exhs. D, & E.)
5. All of the sales in the CALP are derived from water-front lots on Flathead Lake. (Williams Testimony, Exh. D.)
 6. The Taxpayer filed a Request for Informal Review (AB-26) with the DOR on September 29, 2009. During the AB-26 process, the DOR adjusted the property land value to \$1,868,144. This reduction was based on a reduction of front-footage and a calculated .46 acre of unbuildable property. (Exh. A & C, Forster Testimony.)
 7. The Taxpayer filed an appeal with the Flathead County Tax Appeal Board (CTAB) on January 15, 2010, stating:

“We are not appealing the building assessment. We are appealing the land assessment because we have comps that are significantly less than we are being assessed. In addition, approximately ¼ of the land is under water and ¼ of the land is on a greater than 35% slope. Also approximately 15% of the frontage is unusable.” (Appeal Form.)
 8. The Taxpayer is requesting a value of \$1,060,000 for the land. (Appeal Form, LaMeres Testimony.)
 9. The Flathead CTAB heard the appeal on June 24, 2010, and adjusted the DOR value on the subject property land to \$1,650,000. (Appeal Form.)
 10. The Taxpayer appealed to this Board on June 28, 2010. (Appeal Form.)
 11. The Taxpayer offered a packet of information outlining his position that the DOR comparable properties were not the same as the subject property. (Exh. 1, LaMeres Testimony.)
 12. Bain and LaMeres also submitted their own comparables of properties on Flathead Lake they considered more comparable than the DOR's.

- The Taxpayer also contends only properties with similar front-footage should be used as comparables because smaller front-foot lots sell for more than larger ones. (Exh. 1, LaMeres Testimony.)
13. The DOR provided a land sales comparison report showing six properties with similar attributes and located very near the subject property to support the CALP valuation. (Exhs. F, G, H and I.)
 14. The Taxpayer argued its property had negative influences that the DOR comparables did not. The Taxpayer argued that 75% of the lot is unusable property because of steep grade, septic system, county road and high water. (Exh. 1-K, LaMeres Testimony.)
 15. At the hearing, Williams explained the methodology and calculations for computation of the land values for the subject neighborhood. The time-trending of values takes into account the increase and the decrease in the market during this appraisal cycle, to arrive at a value for each sale as of July 1, 2008, the statutory appraisal date. (Williams Testimony.)
 16. Appraiser Forster testified the value, with adjustments made at the informal review, properly valued the subject property. (Forster Testimony.)

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. All residential appraisers must receive specific training and testing to certify that they possess the required knowledge, skills, and abilities to perform residential property appraisals as outlined in this rule. (ARM 42.18.206(1).)
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 appraised value supported by the most defensible valuation information serves as the value for ad valorem tax purposes. (ARM 42.18.110(12).)
7. For the taxable years from January 1, 2009, through December 31, 2014, all class four properties must be appraised at its market value as of July 1, 2008. (ARM 42.18.124(b).)

Findings of Fact and Conclusions of Law

The Board must determine, based on a preponderance of the evidence, whether the DOR set an appropriate value 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 mass-appraisal techniques developed by the DOR are designed to find the value of real property on the open market. As part of the standard

mass appraisal system, the DOR uses a CALP model to determine the value of property within a specific neighborhood.

In this case, the CALP was based on 29 water-front land sales to determine the value of property within the subject neighborhood. This CALP model used a front-foot method to determine the value of waterfront property, which is a standard method in determining waterfront lot valuation. Regional Manager Scott Williams further refined the CALP to reflect the changes in property values during the reappraisal cycle by calculating both market appreciation and depreciation within in the subject CALP. The CALP value was then adjusted for specific deficiencies in the subject property.

The Taxpayer argues the DOR didn't use truly comparable sales in calculating the assessed value for the subject property. In fact, Bain and LaMeres, on behalf of the Taxpayer, believe if the DOR had used sales of properties with similar front-footage sizes, the value of the subject land would be somewhere around \$4,500 per front foot of lake shore. While the Taxpayer went to great lengths to provide the Board with data of comparable sales, the Taxpayer only brought evidence of those properties that justified their requested value. The "comparables" brought by the Taxpayer did not account for economies of scale, and there was no evidence or indication that their comparables were any more relevant than the DOR's comparables.

We find no errors in the Department's valuation of the subject land. We also find the Department's appraisers to be credible witnesses, and the evidence presented to be conclusive as to valuation of the subject property.

The Taxpayer argues their property has negative influences that the DOR did not take into account. However, the DOR made adjustments to the subject property valuation by reducing the front-footage and the value of the unbuildable portion of land on the water's edge and, thus, significantly reduced

the assessed value. We note the CTAB further reduced the value of this property another 12% to account for these negative influences and the DOR has not further challenged this reduction.

Therefore, this Board finds and concludes the Taxpayer has not provided relevant evidence that the DOR appraised value for July 1, 2008 is not fair market value. This Board also concludes the evidence presented by the DOR did support the values assessed in accordance with Montana law.

Thus it is the opinion of this Board that the assessed value adjusted by 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 land value shall be entered on the tax rolls of Flathead County at a 2009 tax year value of \$1,650,000 as determined by the adjusted by the Flathead County Tax Appeal Board.

Dated this 4th of November, 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 4th day of November, 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:

Eagle Cove 1, L.L.C.
C/o Greg Bain & Clare LaMeres
3577 US Highway 93 N.
Kalispell, Montana 59901-6815

U.S. Mail, Postage Prepaid
 Hand Delivered
 E-mail

Scott Williams
Michael Forester
Dan Lapan
Flathead County Appraisal Office
100 Financial Drive Suite 210
Kalispell, MT, 59901

U.S. Mail, Postage Prepaid
 Hand Delivered
 E-mail
 Interoffice

Michelle R. Crepeau
Office of Legal Affairs
Department of Revenue
Mitchell Building
Helena, Montana 59620

U.S. Mail, Postage Prepaid
 Hand Delivered
 E-mail
 Interoffice

Norma Weckwerth, Secretary
800 South Main
Flathead County Tax Appeal Board
Kalispell, Montana 59901

U.S. Mail, Postage Prepaid
 Hand Delivered
 E-mail

/s/ _____
DONNA EUBANK
Paralegal