

BEFORE THE STATE TAX APPEAL BOARD  
OF THE STATE OF MONTANA

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CHARLES & PATTY EVERTS,	)	
	)	DOCKET NO.: PT-2009-162
Appellants,	)	
	)	
-vs.	)	FINDINGS OF FACT,
	)	CONCLUSIONS OF LAW,
THE DEPARTMENT OF REVENUE	)	ORDER and OPPORTUNITY
OF THE STATE OF MONTANA,	)	FOR JUDICIAL REVIEW
	)	
Respondent.	)	

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Taxpayers Charles and Patty Everts appeal the value of their property on Flathead Lake, described as Lot 9, H-745 located in Section 10, Township 23 North, Range 19 West. A hearing was held on January 4, 2013 at which Taxpayers were represented by Attorney Stan Kaleczyc, of Browning Kaleczyc Berry and Hoven, and Appraiser Warren Illi, M.A.I. Mr. Everts testified by telephone during the hearing. The Department of Revenue (DOR) was represented by Attorney Michelle Crepeau, Appraiser Jim Bach, Regional Manager Scott Williams and Appraiser Brittany Rech.

**Issue**

The issue is whether the DOR valued the Taxpayers' property appropriately; specifically, whether it should be reduced in value to reflect the possibility of a flood damaging the property.

## Evidence Presented

1. The Taxpayers bought the subject property, .88 acres with 124 feet of Flathead Lake frontage, in 2002 and built a vacation home on the property in 2004-2005. Testimony Everts.
2. In 2009, the DOR set an appraised value of \$1,625,900 for the land and buildings. Property Record Card, DOR Exh. C.
3. On September 25, 2009, Taxpayers filed a petition for an informal review stating: "Assessed value/appraisal increased too rapidly and unrealistically. Property value increases of up to 74% in Lake Co. is an unfair tax on lake front. Lake front values are down 20-30% compared to 2007 – not up. Adjoining property to north sold for perhaps 1.2 mill in 2006 with 200 front feet lakeshore and home. Our property listed at 1,625,900 now. . . but property worth less. No pool!" AB-26, DOR Exh. A.
4. After informal review, the DOR adjusted the value of the subject property to \$1,587,137 for the following reasons: "Land value is supported by 2002-2008 sales data. Improvements were revalued using the cost method. Total value was adjusted from \$1,625,900 to \$1,587,137." AB-26, DOR Exh. A.
5. Taxpayers appealed on May 12, 2010 to the Lake County Tax Appeal Board (CTAB), stating the reason for the appeal as "Lake frontage itself is valued too high. Comps used were 2006-2007 ½ 2008 – not an average of 2002-2008. \$8500 per running foot is not a realistic value." Property Tax Appeal Form. DOR Exh. D.
6. The CTAB held a hearing in the matter, and reduced the land value "to \$762,607 as potential flood plane (sic). Buildings are not reduced Value \$698,569. Owner refused to let appraiser into buildings – therefore they cannot be adjusted." Property Tax Appeal Form, DOR Exh. D.

7. On Feb 21, 2012, Taxpayers filed an appeal with this Board, stating several reasons for their dissatisfaction with the CTAB decision on the value of the land. The first item described the primary issue that was raised at the hearing before this Board: "Flooding: The County gave a partial credit (\$100,000) on the land for the potential flood risk, but not to the extent that we believe is appropriate in our case." The letter also contests the value of the buildings. Everts Letter of Feb. 16, 2012.
8. At the hearing before this Board, Mr. Warren Illi, M.A.I., presented an oral appraisal opinion, as well as appraisal materials, on behalf of the Taxpayers. Mr. Illi is a state-certified appraiser as well as a member of the Appraisal Institute. He also served for 28 years as a realty specialist for the Forest Service, and has extensive experience appraising land and acquiring conservation easements in the Flathead area. Testimony Illi.
9. Mr. Illi presented evidence of a flash flood that occurred on the Taxpayers' property in 2005 while the house was being built. Station Creek runs through the subject property, roughly parallel to the north boundary of the property, flowing through a culvert under Station Creek Road, which crosses the property running north/south. A combination of rain and snow melt flooded the creek, stopped up the culvert and washed out the road, dumping debris on Taxpayers' property and scouring out the creek bed. Photos of the damage were submitted. The County replaced the road and culvert and the Taxpayers repaired the creek bed by placing large rocks along the banks to keep the creek within its natural streambed. Testimony Illi.
10. Mr. Illi expressed his opinion that the emendations were not adequate to prevent further damage in the event of another flash flood of similar force. Testimony Illi; Taxpayers' Exh. 1, pp. 6,13,14.

11. Mr. Illi testified that he felt that the threat of another flood should be taken into account in setting the value of the subject land and buildings. He was unable to find any sales of property with flash flood dangers to offer as comparable but presented evidence of sales of agricultural lands along the Flathead River that were partially or completely included in a floodplain. Mr. Illi explained that a floodplain is not the same as a flash flood hazard. He noted that a floodplain is generally flat land with a river or stream running across it that floods as the waters rise above its banks, typically in the spring, and can remain flooded for a period of time. The flash flood is of short duration, a matter of hours, occurring in a stream running down steep terrain. An unusually heavy rainfall or snow melt suddenly floods the channel, dislodges rocks and soil as it courses downhill which then scour the stream bed, deepening and widening the channel, destroying trees or roads in its path. The flash flood is unique and unpredictable and may or may not ever occur again. Testimony Illi., Exh. 1, p. 27.

12. The subject property is not in a designated floodplain. Testimony Everts.

13. Mr. Everts' representative at the CTAB hearing, Ms. VanVleet, testified however, that the property was in a designated floodplain. CTAB Tr. 12.

14. Mr. Illi testified that he was unable to find any land sales of properties with a flash flood danger to use as comparables. He instead compiled data from sales of property on the Flathead River that were designated floodplain, comparing the sale prices of parcels with varying percentages of floodplain. He calculated the price per acre for each of the eight sales, two of which had no floodplain but were nearby and included for comparison. Of the eight, he compared two properties, one with no floodplain and the other 100 percent floodplain and concluded the floodplain land was worth less than half. He suggested a 40

- percent reduction in the value of the land to compensate for the danger of flash floods. Testimony Illi, Exh. 1, pp. 27-38.
15. DOR appraiser Jim Bach presented evidence on the Computer Assisted Land Pricing (CALP) model used to value the land and the cost method used to value the buildings. The CALP used for setting the land value was based on 14 sales between 2006 and 2008 and arrives at a value by applying an average cost-per-foot multiplier to the total lake frontage of the subject property. Land Valuation Model, DOR Exh. E.
  16. The DOR then selected three of those properties to present a Land Sales Comparison to the Board. One property used is immediately to the north of the subject property sold in July 2006, and two other are lake-front properties that sold in January and May of 2008, very close to the statewide valuation date of July 1, 2008. Their values, adjusted for comparability to the subject property, showed front-foot values ranging from \$7,908 to \$8,304. The subject property has an appraised front-foot value of \$6,957. Testimony Bach; DOR Exh. H.
  17. Mr. Illi prepared a set of comparable properties that included four sales used by the DOR's CALP as well as three others. The average price per front foot in his appraisal was \$6,769. Exh.1, 29-32.
  18. DOR regional manager, Scott Williams, has 28 years of experience in appraising land in the Flathead area. He testified that there are 45 miles of Flathead Lake east shore that lie in the drainage of the Mission Mountains with many drainage creeks running through lakefront properties, each with flash-flood potential. He stated that there is no market data on the flash-flood potential because there is no market impact. Testimony Williams.
  19. Mr. Williams objected to the comparables used by Mr. Illi as several were too different in size from the subject. Testimony Williams.

20. The DOR objected to any discussion of the value of the improvements because the DOR appraiser was not given access to the home. Testimony Bach.

### **Applicable 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. Homogeneous areas within each county are geographically defined as neighborhoods. The CALP model reflects the July 1, 2008, land market values for the specified neighborhood. ARM 42.18.110(7).
5. For the taxable years from January 1, 2009 through December 31, 2014, all property must be appraised at its market value as of July 1, 2008. ARM 42.18.124(b).

### **Findings of Fact, Conclusions of Law and Board Discussion**

The issue before this Board is whether the DOR set an appropriate value for the subject property. Taxpayers claim the land and improvements should be discounted by 40 percent of its appraised value because of the flash flood hazard. The Department of Revenue claims there is no known flood hazard factor in the market pricing of lakefront real estate on Flathead Lake, and that a reduction in value is not supported by the evidence.

As a general rule, the appraisal of the Department of Revenue is presumed to be correct and the Taxpayer must overcome this presumption. The DOR does, 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 Taxpayers bear the burden of proof that the DOR has miscalculated the value. Mr. Illi, a member of the Appraisal Institute with extensive knowledge of the Flathead area, presented an oral opinion of value as well as the supporting materials. He used the time-adjusted real estate values in the DOR's sales information for land values. Mr. Illi and the DOR arrive at different values for the land largely because of the use of different sets of comparable sales. The DOR used 14 sales in its CALP and Taxpayers used seven sales in their calculations.<sup>1</sup> Four of the sales are common to both and the remaining three were objected to by the DOR as being too dissimilar in size from the subject property. We note that, even allowing those disputed sales to be considered, the front-foot value set by the DOR of \$6,957 is very close to the front-foot value arrived at by averaging Mr. Illi's selected properties, \$6,769. We do not find the difference significant and we do not find any evidence that the DOR incorrectly calculated the value of lakefront property in this area.

The real difference in their conclusions of value, therefore, is the flash flood hazard reduction of 40% advocated by the Taxpayers.

### **Flood Factor**

Mr. Illi admitted that he could find no sales of property on Flathead Lake that had a flood-hazard factor in the sale and thus could not directly show what effect it would have on market values. The evidence of a flood-hazard factor, therefore, was presented by Mr. Illi using very different properties, i.e., those that are all or partially officially designated as floodplain. But a floodplain is not the same as a flash flood risk, as Mr. Illi himself explained. The use of land in designated floodplains is greatly limited by law, a factor not present in the subject property. The evidence presented

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<sup>1</sup> Taxpayers criticized the DOR for using only three comparable sales in the Land Sales Comparison, but the DOR explained that the Land Sales Comparison was not the basis of valuation, rather it was a few sales selected to show that the value set by the CALP is not unrealistic.

demonstrated the subject property has no flood-related limits imposed by law or regulation. The DOR objected to the properties used for the flood-hazard factor comparison because they are much larger than the subject property, ranging from 63 acres to 245 acres in size while the subject property is less than one acre. They are not lake-front but are along the Flathead River, some 25 miles from the subject property. Furthermore, the sales span 13 years and do not appear to be time-adjusted. We find that such properties are not comparable, which they would need to be to establish a pattern to demonstrate that a discount in value is proper for the subject property. Finally, the two sales that Mr. Illi selected from the eight for comparison are both from 1999, which is outside the statutory valuation period, and almost ten years prior to the valuation date at issue. One parcel is 100 percent floodplain, and therefore undevelopable, and the other has no floodplain and so is 100 percent developable. The per-acre price of the floodplain property is less than half the per-acre price of the non-floodplain property, which led Mr. Illi to recommend a 40% reduction in value for the flash flood hazard. The subject property, however, is not unusable and has no flood-related restrictions on its use, and so it is not comparable.

The other six property sales Mr. Illi studied fall into two time frames. The first is three sales from 2004 through 2006, described as 100 percent developable (no floodplain), 37 percent developable, and 5 percent developable. The two impacted properties had very similar per-acre prices (\$10,503 and \$10,314) even though the lower-priced property had 84 developable acres and the higher-priced property had only 4.4 developable acres.

In the second group, the sales are more recent, ranging from June 2009 to December 2011, which are also outside the valuation period. Again, the prices do not establish a rational pattern suggesting a flood factor, as the parcel with the smallest developable acreage (13.2 acres) sold for 25 percent more, per acre, than the parcel with 80.9 developable acres.

We find these examples do not support Taxpayers' claim of proof of a flood factor evident in the sale price of these properties. The evidence is scant, somewhat contradictory, and at best measures a different natural phenomenon from the one cited by the Taxpayers. Both Mr. Illi, for the Taxpayers, and Mr. Williams, for the DOR, each with extensive knowledge of realty values in the area, testified that there has never been a flood-risk factor evidenced in the sale prices of Flathead Lake properties. We decline to create one here on sparse and conflicting data. We also decline to apply the suggested 40 percent discount, calculated by Taxpayer from land prices, to the home and buildings now on the property without any showing of harm or actual risk to the improvements.<sup>2</sup> The banks of the stream have been reinforced with large rocks to keep the flow within the banks, so the conditions are not the same as they were in 2005 when the flood approached, but did not touch, the home.

We also note that the lakefront property immediately north of the subject property is crossed by Station Creek in two places and touched by the creek in a third place. (Exh. 1, p.4). Nevertheless, the lot was sold, subdivided and sold again in 2006, not long after the 2005 flash flood, with a final adjusted sale price of \$8,304 per front foot, which is 19.4 percent higher than the value per front foot put on the subject property by the DOR. Though we are told that the land is a few feet higher than the subject property and was not damaged in 2005, the properties are indistinguishable on the topographical map. The same flash flood complained of by Taxpayers did cross the neighboring property in 2005 and, therefore, could easily have been considered a future hazard, but did not seem to reduce its market value or slow its sale.

We find that Taxpayers' evidence does not meet the burden of proof that a flash flood hazard factor has reduced the market value of the subject property or its improvements. We note that the CTAB reduced the value of the property by \$100,000 specifically because of the floodplain question, but the evidence presented to

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<sup>2</sup> Because of this holding, we need not address the claims relating to the value of the improvements and lack of access by the DOR under § 15-7-139, MCA.

the CTAB on that issue was in error. The CTAB members were told that the land was now designated floodplain but Mr. Everts directly testified at the STAB hearing that it was not. Were the land designated floodplain, there would be limits on its development that might well justify some reduction in value but that is not the case here. There is no impediment on the land, it has already been developed and is in full use as a vacation property. As we have declined the Taxpayers' invitation to create a flood hazard factor for reducing property values, we cannot uphold the CTAB's decision, especially in view of the incorrect testimony that induced it.

The values proposed by the DOR are upheld.

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 Lake County at a 2009 tax year value of \$1,587,137 as determined by the Department of Revenue.

Dated this 28<sup>th</sup> of January, 2013.

BY ORDER OF THE  
STATE TAX APPEAL BOARD

  
KAREN E. POWELL, Chairwoman

(SEAL)

  
SAMANTHA SANCHEZ, Member

  
KELLY FLAHERTY-SETTLE, 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 29<sup>th</sup> day of January, 2013, a copy of the foregoing order was served on the parties hereto by the method indicated below and addressed as follows:

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