

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

RITA L. FORD,)	DOCKET NO.: PT-2009-104
)	
Appellant,)	
)	FACTUAL BACKGROUND,
-vs-)	CONCLUSIONS OF LAW,
)	ORDER and OPPORTUNITY
THE DEPARTMENT OF REVENUE)	<u>FOR JUDICIAL REVIEW</u>
OF THE STATE OF MONTANA,)	
)	
Respondent)	

Rita L. Ford (Taxpayer) appealed a decision of the Flathead County Tax Appeal Board (CTAB) relating to the Department of Revenue’s (DOR) valuation of state-owned property located at 1810 Echo Cabin Loop, Bigfork, Flathead County, State of Montana. The Taxpayer argues the DOR overvalued the property resulting in an increased state land lease cost, and seeks a reduction in value assigned by the DOR. The matter was heard before the State Tax Appeal Board on the record.

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 the proper valuation of land owned by the State of Montana and leased as a cabin site in accordance with §77-1-208, MCA. The market values of the improvements are not in contention in this appeal.

Summary

Rita L. Ford 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 Submitted

1. Due, proper and sufficient notice was given of this matter,. All parties were afforded opportunity to present evidence, oral and documentary. The matter was heard on the record, without objection by the parties.
2. The property, which is the subject of this appeal, is land leased by the Taxpayer from the State of Montana and described as follows:

Lot 19, on Echo Cabin Loop, 1.17 acres of lakefront property on Echo Lake, Section 5, Township 27 North, Range 19 West, County of Flathead, State of Montana. (CTAB Exh. A, pg1.)
3. For the 2008 reappraisal cycle, the DOR originally valued the subject lot at a value of \$311,987. (Exhibit 6.)
4. The Taxpayer filed a Request for Informal Review (AB-26) on September 22, 2009. During the AB-26 process, the DOR adjusted the value of the property to \$282,952, based on a prior ruling from this Board concerning the usable depth of the lot. (Wilkinson Testimony, CTAB Exh. A, Appeal Form.)
5. The Taxpayer filed an appeal with the Flathead CTAB on May 11, 2010, requesting a value of \$88,047, stating:

“Arbitrary relocation of F F.F. line, based on no historical documentation to change it from 145’ to 161’ (lake level). No adjustments for “no build under power line corridor”, Per Flathead Elec. Rules, encumbrances and characteristics not factored into appraisal. Private and leased property not the same.”
6. The CTAB held a hearing on July 23, 2010 and upheld the DOR valuation for the subject property. (Appeal Form.)

7. The Taxpayer was represented at the Flathead CTAB hearing by Ken Ford and Jessica Takehara, who provided exhibits and testimony in favor of the appeal. (CTAB Sign-in Sheet.)
8. The DOR was represented by Doug Wilkinson, DOR Appraiser, and Laura VanDeKop, DOR Lead Appraiser, who provided exhibits and testimony in opposition to the appeal. Anne Shaw Moran, DNRC-KU Planner with the Department of Natural Resources (DNRC) was an informational witness for the DOR. (CTAB Sign-in Sheet.)
9. The DOR used a Computer Assisted Land Pricing (CALP) model to establish the land value for the subject property. The CALP in this instance is based on sales of 11 vacant land properties. The sales used in the CALP and the subject property are all located within Neighborhood 891 Echo Lake, 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 \$2,206 per foot for the first 100 linear feet and \$960 a linear foot for the residual footage, for any lot with over 100 feet of lakeshore. A depth factor is calculated using the average depth of 250 feet. In this case there was residual property of .24 acres over the average 250 feet depth, which was valued at \$4,392. This resulted in a land value for the subject property of \$282,952. There was no indication that the sales were not arms length sales. (DOR Exh. A, CTAB Exh A, pg 1.)
10. The Taxpayer argues several issues, including the accuracy of the lot dimensions, easements and private land versus leased land tax values. (Taxpayer Exh. 1.)
11. The Taxpayer complains that the lot dimensions have changed, since last appraisal, from 145 front feet by 255 feet deep to 161 front feet by 316 feet deep. (Taxpayer Exh. 1.)

12. The DNRC testified that, prior to 2002, the DNRC used a 1956 chain survey reflecting the old lot dimensions of 145 front-feet by 255 feet deep. In 2002, the DNRC completed an internal survey, using global positioning system (GPS), which reflected a new lot dimension of 161 front feet by 316 feet deep. (Moran Testimony.)
13. In 2006, the Taxpayer renewed the lease for five years, based on the new dimension provided by the DNRC. (Exh. 11A & B.)
14. The DNRC completed an official survey, recorded in Flathead County on January 29, 2010 as certificate of survey (COS) 18885, by a licensed surveyor EBY & Associates, reflecting the same dimensions as the DNRC internal survey. (Moran Testimony, Exh 2C.)
15. The Taxpayer complains the surveys are not accurate because of fluctuating high water levels and that the EBY survey is only a rubberstamp of the internal survey of the DNRC. (Ford Testimony, Exh. 2C.)
16. The Taxpayer believes they should be given a reduction in value because of the easements that run across their lot. (Ford Testimony.)
17. The DOR testified an adjustment was made during the AB-26 process to reflect the reduction in the lot depth to 250 feet, and the value was reduced accordingly. This reduction reflects a prior decision of this Board granting a reduction in value based on an unusable portion of the property. The appraiser also testified the value of the property is based on information provided to the Department by the DNRC which reflects the new “front-foot” dimension of 161 feet. (Wilkinson Testimony.)
18. The Taxpayer also believes there is inequity between the taxes paid on private property and the lease payment. The Taxpayer references Lot 84 as a comparable privately owned lot, valued at \$316,240, paying \$1,360 in taxes and the Taxpayer pays over \$6,800 in lease payment. (Ford Testimony.)

19. The DOR provided a comparable sales report showing five properties with similar attributes and located very near the subject property to support its valuation. Two of these sales are beyond the valuation date of July 1, 2008 and this Board will not consider them as evidence in this case¹. (CTAB Exh. B.)

Principles of Law

1. The Board has jurisdiction in this matter. (§77-1-208 (1), MCA, §15-2-302, MCA.)
2. The Board of Land Commissioners shall set the annual fee based on full market value for each cabin site and for each licensee or lessee who at any time wishes to continue or assign the license or lease. The fee must attain full market value based on appraisal of the cabin site value as determined by the department of revenue. (§77-1-208(1), MCA.)
3. The value may be increased or decreased as a result of the statewide periodic revaluation of property pursuant to §15-7-111, MCA, without any adjustments as a result of phasing in values. (§77-1-208(1), MCA.)
4. The department shall administer and supervise a program for the revaluation of all taxable property. (§15-7-111(1), MCA.)
5. The rental for this cabin site lease is five percent of the 2009 appraised market value of the land, excluding improvements, as determined by the Montana Department of Revenue. (ARM 36.25.1003(1).)
6. All taxable property must be assessed at 100% of its market value except as otherwise provided. (§15-8-111, MCA.)
7. 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

¹This practice is prohibited by law. *PacifiCorp v. Dep't of Revenue*, 1st Judicial District, ADV-2007-709 (Feb. 25, 2010.) Thus, in review of the evidence, we decline to consider any evidence of post-assessment-date sales.

or to sell and both having reasonable knowledge of relevant facts. (§15-8-111(2)(a), MCA.)

8. 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).)
9. An appeal of a cabin site value determined by the department of revenue must be conducted pursuant to Title 15, chapter 15 MCA. (§77-1-208(1), MCA.)
10. It is the duty of the state tax appeal board to hear appeals from decisions of the department of revenue in regard to property assessments. (§15-2-201(c), MCA.)
11. 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 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 Taxpayer makes no argument as to the value of the property, only to the size and dimension of the subject lot. In this case, however, the Taxpayer

signed a five year lease with the DNRC in 2006, which clearly states the new dimensions of the subject property. The Taxpayer failed to submit any relevant evidence that the new dimension is incorrect. We find that the only reason the Taxpayer is contesting the dimensions in this appeal is that the value increased substantially during the last appraisal cycle.

The Taxpayer also argues there is an inequity between private property taxes and the payment required to lease state property. The Board fails to see the correlation since the Taxpayer does not own the subject property and must pay the state for its use, as required by statute.

The Montana Legislature was very clear in directing the Board of Land Commissioners that they shall set the annual fee for cabin site leases on full market value of each cabin site. The legislature also clearly outlined full market value will be based on the DOR appraisal during the statewide periodic revaluation. *See* §77-1-208, MCA.

The statewide reappraisal requires the DOR to use mass-appraisal techniques 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 11 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. At the CTAB hearing, the DOR appraiser testified he reviewed the subject property and determined there was prior ruling by this Board concerning lot depth and adjusted the valuation to reflect such ruling. He then verified his adjusted value with other comparable sales on Echo Lake but, unfortunately, he used two sales past the valuation date of July 1, 2008 which this Board cannot consider in its ruling.

We find, however, the DOR appraiser, the CALP, and the valuation evidence of the other three sales to be credible and we find no substantial errors in the DOR's valuation. Further, we find that the Taxpayer failed to provide any evidence that the value set by the DOR is not market value.

Thus, the Board finds the evidence presented by the DOR did support the value assessed. This Board also concludes the Taxpayer has not provided evidence that the DOR appraised value for July 1, 2008 is incorrect.

Thus it is the opinion of this Board that the assessed value set by the DOR and upheld 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 property value shall be set at a 2009 tax year value of \$282,952 as determined by the Department of Revenue and upheld by the Flathead County Tax Appeal Board.

Dated this 5th of January, 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 5th day of January, 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:

Rita L. Ford	<input checked="" type="checkbox"/> U.S. Mail, Postage Prepaid
3018 Horsehead Bay N.W.	<input type="checkbox"/> Hand Delivered
Gig Harbor, WA 98335	<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