

BEFORE THE STATE TAX APPEAL BOARD
OF THE STATE OF MONTANA

MICHAEL H. & DEBRA J. PERETTI,)	DOCKET NO.: PT-2009-130
)	and Department of Revenue
)	cross appeal: PT-2009-130X
)	
Appellants,)	
)	FACTUAL BACKGROUND,
-vs-)	CONCLUSIONS OF LAW,
)	ORDER and OPPORTUNITY
THE DEPARTMENT OF REVENUE)	FOR JUDICIAL REVIEW
OF THE STATE OF MONTANA,)	
)	
Respondent.)	

Statement of Case

Michael H. and Debra J. Peretti (Taxpayers) appealed and the Department of Revenue (DOR) cross appealed a decision of the Flathead County Tax Appeal Board (CTAB) relating to the DOR's valuation of the property located at 7187 U.S. Highway 93 South, in Lakeside, Montana. The Taxpayers argued the DOR overvalued the property for tax purposes, and they seek a reduction in value assigned by the DOR. The Department argues the CTAB erred in lowering the value of the subject property. At the State Tax Appeal Board (Board) telephonic hearing held on April 7, 2011, the Taxpayers were represented by Attorney Mark Buckwalter, and Michael Peretti provided testimony and evidence in support of the appeal. The DOR was represented by Amanda Myers, Tax Counsel. Scott Williams, Regional Manager, 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

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. Michael H. and Debra J. Peretti are the Taxpayers in this proceeding and, therefore, have the burden of proof.
3. The subject property is a 1.92 acre residential lot with 156 feet of Flathead Lake frontage, with the following legal description:

Tract 2BD in Lot 4, Section 07, Township 26N, Range 20W, County of Flathead, State of Montana. (Exh. C.)
4. For tax year 2009, the DOR originally appraised the subject property at a value of \$1,647,153; \$1,453,220 for the land and \$193,933 for the improvements. (DOR Exh. B, Lapan Testimony.)
5. The DOR used a CALP (Computer Assisted Land Pricing) model to value the subject property. This resulted in a land value for the subject property of \$1,453,220. 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 in for those properties either larger or smaller in depth than the average 300 foot lot. (Williams Testimony, Exhs. K & L.)

6. All of the sales in the CALP are derived from water-front lots on Flathead Lake. (Williams Testimony, Exh. K.)
7. The Taxpayers filed a Request for Informal Review (AB-26) with the DOR. During the AB-26 process, DOR appraiser, Emery Noel, completed an external review of the property and adjusted the value to \$1,692,198, which was about \$45,000 higher than the original assessment. No change was given to the land and the improvement value was adjusted to \$238,978 based on the addition of a dock. (Exh.B.)
8. The Taxpayers requested a second AB-26 review on September 27, 2009. DOR appraiser Dan Lapan completed a more extensive internal review of the property and lowered the improvement value to \$181,735. (Exh.B, Lapan Testimony.)
9. The Taxpayers filed an appeal with the Flathead County Tax Appeal Board (CTAB) on April 16, 2010, stating:

“The land has decreased in value due to construction in the area reducing our privacy. Nothing has changed with any of the houses since the last appraisal. No improvements or additions at all. In fact one of the structures has been gone for years but still appears on the 2009 Property update. Also it seems that Emory thinks that a dock which has been on the property for 70 years in *(sic)* now worth \$45000 more, I understand that you may have “Comps” but you seem to have conveniently left out things like foreclosures, the amount of unsold units and the “comps” which have been on the market for quite some time and have not sold.” (Appeal Form.)

10. The Flathead CTAB heard the appeal on December 28, 2010, and modified the DOR front foot value to \$7500 per foot for the water front lot. This adjusted the land value to \$1,298,820 for the subject property. (Appeal Form.)
11. The Taxpayers appealed to this Board on January 11, 2011, stating:

“The appraised value set by the Flathead County Tax Appeal Board does not represent the fair market value of the subject property (land and buildings) as of July 1, 2008.” (Appeal Form.)
12. During the hearing, the Taxpayers requested a value on the land of \$800,000 and an improvement value of \$55,366 (based on the uniqueness of this residential property in a commercial portion of the Lakeside community.) (Peretti Testimony.)
13. The Taxpayers submitted a packet of information outlining their position that similar property in Lakeside sold in July and October of 2009 for considerably less than the assessed value of the subject property. (Buckwalter’s Testimony, Exhs. 2, 3 and 4.)
14. The Taxpayers also submitted several photos of the properties used by the DOR as comparables, to show the differences between the subject property and the comparables. (Buckwalter’s Testimony, Exhs. 5-9.)
15. The DOR provided a land sales comparison report showing six properties with similar attributes and located in the same neighborhood as the subject property to support its valuation. (Exhs. E and G.)
16. 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.)

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 properties must be appraised at its market value as of July 1, 2008. (ARM 42.18.124(b).)
7. 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.)

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 on the subject property for tax year 2009.

The Board has authority to hear evidence, find the facts, apply the law and arrive at a proper value for the subject property. 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 testified that he further refined the CALP to reflect the changes in property values during the reappraisal cycle by calculating both market appreciation and depreciation within the subject CALP.

For the subject property, the DOR applied a size adjustment to the standard front-foot lot derived by the CALP. (*See* EP 5.) In an effort to substantiate the CALP value, the DOR appraiser used a land comparison report comparing six similar properties to the subject property. We find the Department's appraisers to be credible witnesses, and find no substantial errors in the Department's land valuation.

The Taxpayers argue the DOR value is unrealistic in today's real estate market and also argue the DOR CALP had no sales close to the appraisal date of July 1, 2008, making the value of the subject property unrealistically high. They also contend their property is a unique residential lot in a commercial area of Lakeside, causing privacy and access issues. They supplied sales of two similar properties in Lakeside to justify this point. However, both sales were beyond the appraisal date and this Board is prohibited from considering evidence of value after the lien date of July 1, 2008.

Montana statutes require all land to be valued on the same date in order to produce uniform assessments across the state. *See, e.g.*, §§ 15-7-103(5), 15-7-111(3), 15-7-112, MCA. *See also* Rule 42.18.124(b), ARM (setting the appraisal date for valuation as July 1, 2008 for the valuation period of 2009-2014). Thus, the property must be valued for tax purposes on July 1, 2008. Sales that took place prior to that date are time-trended to calculate a market value for the date of valuation. Time trending requires calculating the average increase or decrease per month in a specific area and applying the percent change to verified sales data.

The Board must base the determination on information "known and knowable" as of the lien date and cannot consider post-valuation date information. *PacifiCorp v. Department of Revenue*, 2009 Mont. Dist. LEXIS 594 (1st Judicial District Court, 2010.) Sales that occurred after the valuation date may not be used for valuation of the property. Thus, all taxpayers are subject to the same market effects by virtue of the same tax appraisal date.

In this instance, the Flathead CTAB lowered the value of the subject land. CTABs are uniquely suited to evaluate local real estate markets and specific neighborhoods relative to their county and are able to apply this expertise to individual properties. The Board reviewed the photographic

evidence and comparable properties submitted by the DOR and the Taxpayers, and finds the subject property is slightly negatively affected by the activities of the commercial surroundings, thus justifying the reduced value set by the CTAB. Neither party has presented sufficient evidence to demonstrate that the modified value is not market value.

It is the opinion of this Board that the assessed value modified 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 entered on the tax rolls of Flathead County at a 2009 tax year value as determined by the Flathead County Tax Appeal Board.

Dated this 14th 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 t his Order.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 14th 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:

Michael H. & Debra J. Peretti 639 West Artemos Drive Missoula, MT 59803-1503	<input checked="" type="checkbox"/> U.S. Mail, Postage Prepaid <input type="checkbox"/> Hand Delivered <input type="checkbox"/> E-mail
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Scott Williams Don Lapan Flathead County Appraisal Office 100 Financial Drive Suite 210 Kalispell, MT, 59901	<input checked="" type="checkbox"/> U.S. Mail, Postage Prepaid <input type="checkbox"/> Hand Delivered <input type="checkbox"/> E-mail <input type="checkbox"/> Interoffice
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Michelle R. Crepeau Office of Legal Affairs Department of Revenue Mitchell Building Helena, Montana 59620	<input type="checkbox"/> U.S. Mail, Postage Prepaid <input type="checkbox"/> Hand Delivered <input type="checkbox"/> E-mail <input checked="" type="checkbox"/> Interoffice
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Norma Weckwerth, Secretary 800 South Main Flathead County Tax Appeal Board Kalispell, Montana 59901	<input checked="" type="checkbox"/> U.S. Mail, Postage Prepaid <input type="checkbox"/> Hand Delivered <input type="checkbox"/> E-mail
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/s/ _____
DONNA EUBANK
Paralegal