

BEFORE THE STATE TAX APPEAL BOARD
OF THE STATE OF MONTANA

W. RAY JONES,)	DOCKET NOS.: PT-2012-22
)	through PT-2012-36
Appellant,)	
)	FACTUAL BACKGROUND,
-vs-)	CONCLUSIONS OF LAW,
)	ORDER and OPPORTUNITY
THE DEPARTMENT OF REVENUE)	FOR JUDICIAL REVIEW
OF THE STATE OF MONTANA,)	
)	
Respondent.)	

W. Ray Jones, Esq. (Taxpayer) appealed decisions of the Flathead County Tax Appeal Board (CTAB) relating to the Department of Revenue’s (DOR) valuation of fifteen residential lots in Columbia Falls, Flathead County, Montana. The Taxpayer argues the DOR overvalued the properties for tax purposes, and he seeks a reduction in values assigned by the DOR. At the State Tax Appeal Board (Board) hearing held on July 23, 2013, the Taxpayer appeared on his own behalf, providing testimony and evidence in support of the appeal. Taxpayer is an attorney licensed to practice law in the State of California. DOR was represented by Amanda Myers, Tax Counsel. The Department’s Regional Manager Scott Williams, and Flathead County Appraiser Dan LePan presented testimony and evidence in opposition to the appeal.

Issue Presented

The issue before this Board is whether the Department of Revenue erred in valuing the subject properties for tax purposes for tax year 2012.

Summary

W. Ray Jones, Esq. is the Taxpayer in this proceeding and, therefore, has the burden of proof to demonstrate that his properties have not been fairly valued by the Department. Based on a preponderance of the evidence, the Board affirms the decision of the Flathead County Tax Appeal Board that the valuations assigned by the Department of Revenue are supported by the evidence presented.

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 properties are 15 residential lots, described as follows:

- PT-2012-22: Lot 7, River Park Estates, Phase 3, Section 17, Township 30 North, Range 20 West, Columbia Falls, Montana, Geocode 07-4186-17-3-09-35-0000.
- PT-2012-23: Lot 8, River Park Estates, Phase 3, Section 17, Township 30 North, Range 20 West, Columbia Falls, Montana, Geocode 07-4186-17-3-09-33-0000.
- PT-2012-24: Lot 9, River Park Estates, Phase 3, Section 17, Township 30 North, Range 20 West, Columbia Falls, Montana, Geocode 07-4186-17-3-09-30-0000.
- PT-2012-25: Lot 10, River Park Estates, Phase 3, Section 17, Township 30 North, Range 20 West, Columbia Falls, Montana, Geocode 07-4186-17-3-09-29-0000.
- PT-2012-26: Lot 11, River Park Estates, Phase 3, Section 17, Township 30 North, Range 20 West, Columbia Falls, Montana, Geocode 07-4186-17-3-09-25-0000.
- PT-2012-27: Lot 12, River Park Estates, Phase 3, Section 17, Township 30 North, Range 20 West, Columbia Falls, Montana, Geocode 07-4186-17-3-09-23-0000.
- PT-2012-28: Lot 13, River Park Estates, Phase 3, Section 17, Township 30 North, Range 20 West, Columbia Falls, Montana, Geocode 07-4186-17-3-09-21-0000.
- PT-2012-29: Lot 14, River Park Estates, Phase 3, Section 17, Township 30 North, Range 20 West, Columbia Falls, Montana, Geocode 07-4186-17-3-09-20-0000.
- PT-2012-30: Lot 15, River Park Estates, Phase 3, Section 17, Township 30 North, Range 20 West, Columbia Falls, Montana, Geocode 07-4186-17-3-09-18-0000.
- PT-2012-31: Lot 16, River Park Estates, Phase 3, Section 17, Township 30 North, Range 20 West, Columbia Falls, Montana, Geocode 07-4186-17-3-09-16-0000.
- PT-2012-32: Lot 17, River Park Estates, Phase 3, Section 17, Township 30 North, Range 20 West, Columbia Falls, Montana, Geocode 07-4186-17-3-09-14-0000.
- PT-2012-33: Lot 18, River Park Estates, Phase 3, Section 17, Township 30 North, Range 20 West, Columbia Falls, Montana, Geocode 07-4186-17-3-09-11-0000.

PT-2012-34: Lot 20, River Park Estates, Phase 3, Section 17, Township 30 North, Range 20 West, Columbia Falls, Montana, Geocode 07-4186-17-3-09-07-0000.
PT-2012-35: Lot 19, River Park Estates, Phase 3, Section 17, Township 30 North, Range 20 West, Columbia Falls, Montana, Geocode 07-4186-17-3-09-09-0000.
PT-2012-36: Lot 21, River Park Estates, Phase 3, Section 17, Township 30 North, Range 20 West, Columbia Falls, Montana, Geocode 07-4186-17-3-09-01-0000.
(Appeal Forms.)

3. For tax year 2012, the DOR appraised the subject lots at a total value of \$1,945,816.
4. Taxpayer filed a Request for Informal Review (AB-26), asking for an informal review meeting with the Department due to dissatisfaction with the DOR valuations. He enumerated the various deficiencies suffered by the subject lots. (DOR Exh. B.)
5. After review, the DOR made the following adjustments, resulting in a total reduction of \$179,736 and a total value of \$1,766,080:

PT-2012-22:	Lot 7:	\$ 64,791
PT-2012-23:	Lot 8:	\$ 63,702
PT-2012-24:	Lot 9:	\$ 63,409
PT-2012-25:	Lot 10:	\$ 64,266
PT-2012-26:	Lot 11:	\$144,947
PT-2012-27:	Lot 12:	\$145,772
PT-2012-28:	Lot 13:	\$145,381
PT-2012-29:	Lot 14:	\$147,609
PT-2012-30:	Lot 15:	\$145,151
PT-2012-31:	Lot 16:	\$141,979
PT-2012-32:	Lot 17:	\$138,190
PT-2012-33:	Lot 18:	\$144,434
PT-2012-34:	Lot 20:	\$145,273
PT-2012-35:	Lot 19:	\$146,647
PT-2012-36:	Lot 21:	\$ 64,529

(Appeal Forms.)

6. The Taxpayer then filed appeals with the Flathead CTAB on June 18, 2012 asking for an approximate total value of \$1,041,500, with the following values for the subject lots:

PT-2012-22:	Lot 7:	\$25,000
PT-2012-23:	Lot 8:	\$35,000 to \$45,000
PT-2012-24:	Lot 9:	\$40,000 to \$45,000
PT-2012-25:	Lot 10:	\$60,000
PT-2012-26:	Lot 11:	\$75,000 to \$85,000
PT-2012-27:	Lot 12:	\$75,000 to \$85,000
PT-2012-28:	Lot 13:	\$75,000 to \$85,000
PT-2012-29:	Lot 14:	\$75,000 to \$85,000
PT-2012-30:	Lot 15:	\$75,000 to \$85,000
PT-2012-31:	Lot 16:	\$75,000 to \$85,000
PT-2012-32:	Lot 17:	\$67,500 to \$76,500
PT-2012-33:	Lot 18:	\$75,000 to \$85,000
PT-2012-34:	Lot 20:	\$75,000 to \$85,000
PT-2012-35:	Lot 19:	\$85,000
PT-2012-36:	Lot 21:	\$25,000

(Appeal forms.)

7. The Flathead County Tax Appeal Board (CTAB) heard the appeals on November 8 and 9, 2012. The County Tax Appeal Board upheld the DOR values.

8. The Taxpayer appealed to the State Tax Appeal Board on November 30, 2012, citing the following grounds for appeal:

USPAP violations, appraiser advocacy, statistical analysis is flawed, economic conditions in Flathead Valley, failure to update, etc.

(Appeal Forms.)

9. The State Tax Appeal Board accepted the appeals, and set a hearing in the matter.

10. A hearing was held before the Board on July 26, 2013, and Taxpayer and DOR presented evidence and arguments.

11. Taxpayer argued that the value set for his properties was excessive. Taxpayer testified that BPA power lines detract from value of the property by detracting from mountain views available in the area. (CTAB Tr. p. 145, DOR Exh.G.)

12. Taxpayer also raised issues of excessive subsurface water detracting from lot value. This is the third phase of development of the Taxpayer's property. He claimed that subject lots (all in Phase III) are lower in value than lots in Phase I and II due to underground streams. He testified that subsurface water requires engineered slab foundations and sump pumps, without basements, thus raising the end cost of developing these lots and reducing the desirability to potential purchasers. (CTAB Tr. p. 9-10, 91.)

13. Taxpayer claimed the nearby sales used by the DOR's to set his property value were of questionable comparability or were not arm's-length transactions. (CTAB Tr. p. 84.)

14. Finally, Taxpayer testified that the local and statewide tax system created burdensome and oppressive city taxation making lots uneconomical to develop. (AB26 forms.) He referenced Federal and State setback requirements which reduced the buildable size of his lots.

15. Petitioner presented no other evidence to form the basis for an alternative value calculation, except for bringing an article from online source Wikipedia (CTAB Taxpayer unmarked exhibit), and a generic assessment of regional residential property values by Kelley Appraisal. (CTAB Taxpayer Exh. 3.)

16. On behalf of the Department, DOR appraiser Dan Lapan testified that he reviewed the valuation of the subject properties when the initial informal appeal was filed with the office. (LaPan testimony.) Minor adjustments were made to the valuation at that time. DOR appraiser LaPan testified that, after review of all information, he believed the valuation of the subject properties was correct.

17. In valuing the properties, the DOR testified its staff used a computer assisted land pricing (CALP) model to determine the value for the subject lots. (DOR Exh. D.)

18. The CALP model generated by the DOR utilized 52 sales of similar vacant land in Flathead County between 2004 and 2007, adjusted for size, and time trended those sales to account for both the increase and decrease in the market during that time. (DOR Exh. D (confidential), Testimony Williams.)

19. To demonstrate that the CALP was correct, DOR presented examples and photographs of several comparable properties, essentially next to the subject lots, that had sold close in time to the lien date. (DOR Exhs. E, F, G and J; MLS/RTC listings and documentation showing the sale price in arm's-length transaction for comparable lots.)

20. The DOR also submitted the Covenants, Conditions and Restrictions for River Park Estates subdivision written and approved by Taxpayer as evidence of the Taxpayer knowledge of local ground water conditions and restrictions. (DOR Exhs. H, I.)

Principles of Law

The State Tax Appeal Board has jurisdiction over this matter. (§15-2-301, MCA.) All taxable property must be assessed at 100 percent of its market value except as otherwise provided (§15-8-111, MCA) as of the lien date of July 1, 2008.

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.)

The appraised value supported by the most defensible valuation information serves the value for ad valorem tax purposes. (ARM 42.18.110 (12).)

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, Conclusions of Law and Board Discussion

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 2012.

The DOR is charged with appraising the property at full market value pursuant to §15-8-111, MCA. 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).)

We see no indication that the DOR value for the subject properties is incorrect. At the hearing, the Taxpayer failed to provide a formal appraisal or any credible

evidence of comparable property proving a lower valuation was justified. While the Taxpayer provided several theories about why his property was overvalued, he provided no evidence in support of his theories or to discredit the comparable properties used by DOR for valuation of the subject properties.

In contrast, the Department provided comparable sales data for similar lots within a stone's throw of the subject properties. (DOR Exh. D.) The Board found the testimony and evidence to be credible. The comparable properties are lots in proximity and with similar characteristics as the subject properties which sold close to the valuation date. In this instance, the comparable properties are essentially identical to the subject property or developed in a similar manner to the subject properties, which indicates that the valuation of the subject property is reasonable.

Taxpayer argued that City, State and Federal setbacks and other regulations prevented him from fully utilizing his property, thereby reducing its value. Taxpayer testified that the City of Columbia Falls will not allow any structures to be built in the riparian area, therefore making the appeal of lots on the Flathead River nonexistent. Taxpayer provided arguments of the low value of his properties due to federal riverfront protection and riparian laws which reduce the buildable lot sizes of his properties and thus reduce their values. Taxpayer fails to address, however, that the adjacent comparable properties are subject to the same restrictions.

Taxpayer also made statements during his testimony that, because he had not cleared trees or brush from the lots fronting the river, the prospective buyer could not see the river. Therefore, he speculates that a prospective buyer would be unlikely to pay premium prices for riverfront. We do not find that argument to be credible.

Taxpayer testified that there are no comparable properties for four contiguous lots selling at one time in 2006. DOR is mandated to value these lots individually, which is how its comparables were presented. Taxpayer testified that comparables to all lots simply do not exist or existed without consideration that BPA power lines

looming over each of his lots make them less desirable. The DOR responded to this argument by demonstrating at least four nearby lots with similar perceived restrictions and views having sold to provide market comparables. (DOR Exh. D.) This Board does not find that the Taxpayer has provided credible evidence that the Department's comparables are not valid and reasonable.

Thus, the decisions of the Flathead County Tax Appeal Board are affirmed.

Order

IT IS THEREFORE ORDERED by the State Tax Appeal Board of the State of Montana that the subject properties' values shall be entered on the tax rolls of Flathead County at the value set by the Department of Revenue and affirmed by the Flathead County Tax Appeal Board.

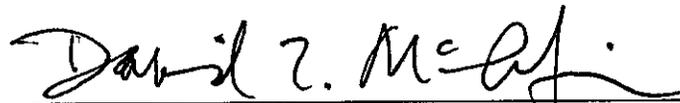
DATED this 28th day of August, 2013.

BY ORDER OF THE
STATE TAX APPEAL BOARD


KAREN E. POWELL, Chairwoman

(SEAL)


SAMANTHA SANCHEZ, Member


DAVID L. McALPIN, 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 28th day of August, 2013, 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:

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/s/ Donna Eubank byja
DONNA J. EUBANK, Paralegal