

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

Nancy L. Rice-Fritz, Janet A. & Gilbert S. Rice are the Taxpayers in this proceeding and, therefore, have the burden of proof. Based on a preponderance of the evidence, the Board affirms the decision of the Lake 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 2.1 acre lot with 100 feet of Flathead Lake frontage, with the following legal description:

Lot 12 of Block 2, Sunny Shore Villa site, Section 16, Township 23N, Range 20W, of Lake County, State of Montana. (Exh. B.)
3. For tax year 2009, the DOR originally appraised the subject property at a value of \$1,368,000: \$1,299,599 for the land and \$68,401 for the improvements. The improvement values are not at issue in this matter. (Appeal Form.)
4. The Taxpayers filed a Request for Informal Review (AB-26) with the DOR on September 25, 2009. During the AB-26 process, the DOR adjusted the subject property value to \$858,063. This reduction was made due to the fact that the lot is much deeper than standard lots, so a

- lower residual value was used for part of the property. (Exh. A, Simonsen Testimony.)
5. The DOR used a CALP (Computer Assisted Land Pricing) model to value the subject property. This resulted in a water front lot value for the property of \$771,000. The CALP in this instance is based on 23 lake-front land sales. The CALP sales and the subject property are located in Neighborhoods 101.B, 300.1 and 302.2, which are geographic areas designated by the DOR as having similar characteristics for purposes of valuation. Based on the CALP, the DOR established a standard waterfront lot size of 100 feet by 250 feet and set a front foot value of \$7,710 per foot for the first 100 linear feet. (Exh. I.)
 6. In this case, the subject lot was 930 feet deep making it 1.536 acres larger than the standard water front lot. During the AB-26 process, the DOR calculated a value of \$18,622 for the residual land bringing the total land value to \$789,662. (Williams Testimony, Exh. I.)
 7. All of the sales in the CALP are derived from water-front lots on Flathead Lake. (Williams Testimony, Exh. I.)
 8. The Taxpayers filed an appeal with the Lake County Tax Appeal Board (CTAB) on May 27, 2010, stating:

“The assessed value of the land previously was \$303,138 in 2002. According to Northwest Association of Realtors the value of lake property in Lake County increased approx 80% through 2008 which would make the land value \$545,648. I looked at sales information and it seems like properties that sell for over \$800,000 have nicer homes than ours.” (Appeal Form.)
 9. The Taxpayers requested a value of \$545,648 for the land before the CTAB. The Taxpayers are no longer disputing the value of the improvements. (Exh. 1, Janet Rice Testimony.)

10. The CTAB heard the appeal on October 20, 2010, and disapproved the requested appeal because they felt the adjustment made by the DOR during the AB-26 process was adequate. (Appeal Form.)
11. The Taxpayers appealed to this Board on November 16, 2010 and are now asking for the value of the land to be \$510,000. (Pre-hearing questionnaire.)
12. The Taxpayers offered a packet of information outlining their position that other lake front property sales averaged much less per front foot than the DOR assessed the subject property. (Exh. 1, Janet Rice Testimony.)
13. The DOR provided a land sales comparison report showing three properties with similar attributes and located very near the subject property to support the CALP valuation. (Exhs. D, E, F and G.)
14. The Taxpayers submitted a land comparison sheet and descriptions from the Multiple Listing Service (MLS) using bare land properties they considered more comparable than the sales the DOR used. This comparison resulted in an average front foot price of \$5,061. (Exh. 1, Janet Rice Testimony.)
15. The DOR argued because there are very few vacant land sales left on Flathead Lake, the comparables used by the Taxpayers are inferior to the subject lot. (Williams Testimony.)
16. The Taxpayers also provided four comparable property values with improvement values abstracted where the front foot values averaged \$6,334 per foot. (Exh 1., Janet Rice Testimony.)
17. The Taxpayers also argued there are great differences in front foot values of properties in their own subdivision. These values range from \$5,094 to \$13,990 per front foot.(Exh. 1, Janet Rice Testimony.)

18. At the hearing, Mr. 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. (Exh. H., Williams Testimony.)
19. Mr. Williams also testified that certain neighboring properties did not receive an adjustment for the depth of the lot, and thus the values were significantly higher than the subject property.
20. Appraiser Simonsen testified the value, with adjustments made at the informal review, properly valued the subject property. (Simonsen 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. As long as a taxpayer's property is not overvalued in the reappraisal process, he cannot secure a reduction in his own appraisal on the grounds that another taxpayer's property is under appraised. *Patterson v. Department of Revenue*, 171 Mont. 168, 557 P.2d 798 (1976).

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 23 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 subject property value was then adjusted to reflect a standard waterfront lot with a residual value assigned for any excess property. (*See* EP 5.)

The Taxpayers argue the DOR didn't use truly comparable sales in calculating the assessed value for the subject property. In fact, they believe if the DOR had used sales of vacant properties with similar front-footage sizes, the value of the subject land would be somewhere around \$510,000. While the Taxpayers went to great lengths to provide the Board with data of waterfront sales, the Taxpayers only brought evidence of those properties that justified their requested value. The "comparables" brought by the Taxpayers did not account for economies of scale in the purchase of a particular larger or smaller lot. For example, the comparable lots provided by the Taxpayers did not have any residual land beyond the standard lake front lot. Further, 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. Therefore, this Board finds and concludes the Taxpayers have not provided evidence that the DOR appraised value for July 1, 2008 is not fair market value.

Equalization with Similar Properties

The Taxpayers argue there is inequality in the value of property on Flathead Lake and provided evidence of this in their own subdivision by demonstrating that similar lots have extremely different front foot values. In fact, the Taxpayers demonstrated that neighboring properties were valued much higher than their property. (EP 15.) The testimony indicated, however, the DOR made adjustments to the subject property valuation by applying a much reduced value to the subject property's excess property beyond the standard 250 foot water front depth used in the CALP model. Williams testified that the CALP model was used on all the properties within this subdivision, however, various properties other than the subject did not receive the reduced valuation for the residual land.

This Board would note that the inconsistencies demonstrated by the Taxpayers rightly require that the Department review valuation on certain other lake-front property in this subdivision, in light of the Department's requirement to equalize value under the Montana Constitution, §15-8-111(1) and (3), MCA, and §15-8-601, MCA (requiring reassessment when property has been erroneously assessed or omitted from taxation).

Summary

The Taxpayers failed to provide sufficient proof that their property is valued in excess of similar property. Thus it is the opinion of this Board that the assessed value determined by the DOR is correct and the decision of the Lake 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 Lake County at a 2009 tax year value of \$789,662 as determined by the DOR and affirmed by the Lake County Tax Appeal Board.

Dated this 17th day of March, 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 17th day of March, 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:

Nancy L. Rice-Fritz, Janet A. & Gilbert S. Rice 4350 Trails End Road Missoula, Montana 59803	<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 Monty Simonsen Lake County Appraisal Office 3 - 9 th Ave. W. Polson, MT, 59860	<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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Amada Myers 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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Louise Schock, Secretary 53780 Schock Lane Lake County Tax Appeal Board St. Ignatius, Montana 59865	<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