

BEFORE THE STATE TAX APPEAL BOARD  
OF THE STATE OF MONTANA

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RONALD CLARK,	)	
	)	DOCKET NO.: PT-2009-73
	)	
Appellant,	)	
-vs-	)	FACTUAL BACKGROUND,
	)	CONCLUSIONS OF LAW,
THE DEPARTMENT OF REVENUE OF THE STATE OF MONTANA,	)	ORDER and OPPORTUNITY FOR JUDICIAL REVIEW
	)	
Respondent.	)	

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**Statement of Case**

Ronald Clark (Taxpayer) appealed a decision of the Flathead County Tax Appeal Board (CTAB) relating to the Department of Revenue's (DOR) valuation of his property identified as Section 28, Township 26N, Range 20W, Lot 018, Angel Point Acreage, of Flathead County, State of Montana. The Taxpayer argues the DOR overvalued the property for tax purposes, and he seeks a reduction in value assigned by the DOR. At the State Tax Appeal Board (Board) hearing held on September 2, 2010, the Taxpayer represented himself and provided testimony and evidence in support of the appeal. The DOR, represented by Michele Crepeau, Tax Counsel, Scott Williams, Regional Manager, Don Leuty, DOR appraiser, 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

Ronald Clark 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 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 lot measuring 200 feet by 238 feet with 200 feet of Flathead Lake frontage, with the following legal description:  
Section 28, Township 26N, Range 20W, Lot 018, Angel Point Acreage, County of Flathead, State of Montana.  
(Exh. B.)
3. For tax year 2009, the DOR originally appraised the subject property at a value of \$1,640,000; \$1,478,290 for the land and \$161,710 for the improvements. (DOR Exh. A.)
4. The DOR used a CALP (Computer Assisted Land Pricing) model to value the subject properties. This resulted in a land value for the subject property of \$1,478,290. 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. F, & G.)
5. All of the sales in the CALP are derived from water-front lots on Flathead Lake. (Williams Testimony, Exh. G.)
  6. The Taxpayer filed a Request for Informal Review (AB-26) with the DOR. During the AB-26 process, the DOR adjusted the property value to \$1,330,461, with a 10% decrease in land value due to adverse topography. The improvement value was adjusted to \$152,768 after an external inspection and the addition of a dock and a boat house to the assessment. (DOR Exh.A.)
  7. The Taxpayer filed an appeal with the Flathead County Tax Appeal Board (CTAB) on February 12, 2010, stating:

“I do not agree with the appraised values set by the Dept. of Revenue.” (Appeal Form.)
  8. The Flathead CTAB heard the appeal on May 21, 2010, and upheld the DOR value on the subject property. (Appeal Form.)
  9. The Taxpayer appealed to this Board on June 8, 2010, stating:

“I did not received (*sic*) the requested material from the local DOR office. I do not agree with the Appraised (*sic*) value set by the DOR and the Flathead CoTAB. I have many questions concerning the actions of personel (*sic*) from the DOR. I do not agree with the comparables.” (Appeal Form.)
  10. During the hearing, the Taxpayer requested a value on the land of somewhere between \$4,000 and \$4,500 per front foot of lake shore and an improvement value of \$65,000 (based on the house not being winterized and used only as a summer home.) (Clark Testimony.)

11. The Taxpayer submitted a packet of information outlining his position that similar property is not assessed in the same manner. (Exh. 1.)
12. The Taxpayer believes the value of the comparable properties at the time of sale should be used in valuing similar properties. (Clark Testimony.) He submitted several exhibits of properties sold on Flathead Lake, with varying sales dates, which he contends should be used to value the subject property. (Clark Testimony, Exh. 1, p.p. 2-5.)
13. The Taxpayer quoted a brochure produced by this Board concerning the DOR practice of making information used in valuing property available to the taxpayers. (Clark Testimony, Exh. 1, p. 9.)
14. The Taxpayer requested specific information on all Flathead Lake water frontage properties where DOR appraiser Emery Noel was assigned. (Exh. 2, Clark Testimony.) The DOR supplied the requested information with an explanation that this data has no bearing upon the value of the subject property, and was not used to value the subject property. (Exh. 2, Williams Testimony.)
15. The DOR provided a comparable sales report showing three properties with similar attributes and located very near the subject property to support its valuation. (Exhs. E, H, I and J.)
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. All residential appraisers must receive specific training and testing to certify that they possess the required knowledge, skills, and abilities to perform residential property appraisals as outlined in this rule. (ARM 42.18.206(1).)
5. 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).)
6. The appraised value supported by the most defensible valuation information serves as the value for ad valorem tax purposes. (ARM 42.18.110(12).)
7. 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).)

### **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. In this instance, we will review whether the DOR properly valued 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.

We find and conclude that the Department's valuation is correct and properly values the subject property. 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 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.

For the subject property, the DOR applied a size adjustment to the standard front-foot lot derived by the CALP. (*See* EP 4.) The DOR appraiser also determined the subject property had a negative influence, based on adverse topography of a steep shoreline. As a result of this negative influence, the appraiser determined a 10% reduction in value was appropriate. We find the Department's appraisers to be credible witnesses, and the evidence presented to be conclusive as to valuation of the subject property.

The Taxpayer argues the DOR didn't use certain sales in calculating the assessed value for the subject property. (EP 12.) In fact, he believes if the DOR had used these sales, and the sales prices, the value of the subject land would be somewhere around \$4,000 to \$4,500 per front foot of lake shore. (EP 10.) None of the sales presented by the Taxpayer, however, have been time-trended

to the required appraisal date of July 1, 2008. Thus, we cannot determine the value of these properties as of the valuation date, nor how it would affect valuation of the subject property.

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 achieve 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. (CALP Exhs. F & G, Williams Testimony.) 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.

Additionally, at least one of the properties relied on by Taxpayer resold at a much higher price during the appraisal cycle at issue. Taxpayer failed to include the recent sale of this “comparable,” which would indicate a much greater market value than he claims. DOR Regional Manager, Scott Williams, testified if the DOR had included this sale in the CALP, it would have indicated an even higher value for lake front properties even with time-trending to the appraisal date.

The Taxpayer also argues the value of the improvements should be reduced to \$65,000 because the house is not winterized and is basically a summer home. The Taxpayer, however, presented nothing more than his own testimony in justification for his claim, nor did he present any evidence that the DOR improvement value is incorrect. There is no evidence that other lake-

front properties are all winterized year-round properties. In fact, the comparable properties presented appear to be similar in use and construction to the subject property. (*See* EP 15.)

Therefore, this Board finds and concludes the Taxpayer has not provided evidence the DOR appraised value for July 1, 2008 is not fair market value. This Board also concludes the evidence presented by the DOR did support the values assessed in accordance with Montana law.

Thus it is the opinion of this Board that the assessed value set by the DOR is correct and the decision of the Flathead County Tax Appeal Board is affirmed.

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**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 \$1,483,229 as determined by the Department of Revenue and affirmed by the Flathead County Tax Appeal Board.

Dated this 29th of September, 2010.

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 1st day of October, 2010, 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:

Ronald Clark	<input checked="" type="checkbox"/> U.S. Mail, Postage Prepaid
P.O. Box 696	<input type="checkbox"/> Hand Delivered
Lakeside, Montana 59922	<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, MT, 59901	

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
800 South Main	<input type="checkbox"/> Hand Delivered
Flathead County Tax Appeal Board	<input type="checkbox"/> E-mail
Kalispell, Montana 59901	

/s/ \_\_\_\_\_  
DONNA EUBANK  
Paralegal