

BEFORE THE STATE TAX APPEAL BOARD  
OF THE STATE OF MONTANA

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CLARICE F. RYAN,	)	
	)	DOCKET NO.: PT-2009-108
	)	
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**

Clarice F. Ryan (Taxpayer) appealed a decision of the Flathead County Tax Appeal Board (CTAB) relating to the Department of Revenue’s (DOR) valuation of her property identified as Lot 3, Block 2, Crestview Eighty 1, Section 25, Township 27 North, Range 20 West, Flathead County, State of Montana. The Taxpayer argues the DOR overvalued the property for tax purposes, and seeks a reduction in value assigned by the DOR. The State Tax Appeal Board (Board) held a telephonic hearing on May 4, 2011. The Taxpayer was represented by Donald J. Ryan, providing testimony and evidence in support of the appeal. The DOR was represented by Teresa Whitney, Tax Counsel. Scott Williams, Regional Manager, Don Leuty, and Carolyn Carman, DOR appraisers, 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 applied the correct value to the subject property for tax purposes for tax year 2009.

### Summary

Clarice F. Ryan is the Taxpayer in this proceeding and, therefore, has the burden of proof. Based on a preponderance of the evidence, the Board upholds 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 vacant 0.8 acre, or 34,848 square foot, residential lake view lot with the following legal description:

Lot 3 of Block 2 in the Crestview Eighty 1 subdivision, Section 25, Township 27 North, Range 20 West, Flathead County, State of Montana. (DOR Exh. B.)
3. For tax year 2009, the DOR used a CALP (Computer Assisted Land Pricing model) to establish the original value of \$328,332 for the lot. (DOR Exhs. A & D.)
4. The CALP in this instance is based on 26 property sales surrounding Flathead Lake. The CALP sales and the subject property are all located in Neighborhood 855.0. These properties are in close proximity to Flathead Lake and may or may not have lake views. Based on the CALP, the DOR established a per-foot base value for the first 10,000 square feet and a residual value for the remaining square feet. (DOR Exh. D, Williams testimony.)

5. Neighborhood 855.0 is a geographic area designated by the DOR as having similar characteristics for purposes of valuation and has four different categories. These categories range from a standard lot to a lake marsh fronting lot with views, each with a different base value. (DOR Exh. D, Williams testimony.)
6. The Taxpayer filed a Request for Informal Review (AB-26) on October 1, 2009, asking for a review of the assessment issued using the information submitted. (DOR Exh. A.)
7. Upon reviewing, the DOR adjusted the value downward to \$159,332 using the lowest base value in the CALP. (DOR Exh. A, Testimony Carmen.)
8. The Taxpayer filed an appeal with the Flathead County Tax Appeal Board (CTAB), asking for a value of \$100,000, on June 3, 2010, stating:

“Assessment value excessive. I include same reasons as set forth on AB-26 filed 10-1-09 & intend to add data prior to hearing. Form AB-26 will be enclosed within a short time.” (Appeal Form.)
9. The Flathead CTAB heard the appeal on August 6, 2010, and upheld the DOR value for the subject property. (Appeal Form.)
10. The Taxpayer appealed to this Board on September 6, 2010, stating:

“Total dissatisfaction with Flathead Board hearing procedure & rubber-stamped results. Legally disagree with the DOR capricious & arbitrary methods of valuations (e.g. “neighborhoods”, “CALP” & others), and its disregard of the plunging depths of realty values, and adjustments to account for differences in properties.” (Appeal Form.)
11. At the hearing before this Board, Mr. Ryan argued the DOR comparables were too variable. He submitted several exhibits outlining his point. (Exhs. R-4 and R-5, Ryan testimony.)
12. The Taxpayer submitted a “NBHD Land Valuation Model Reconsidered,” prepared by Edwin X. Berry, PhD, Atmospheric

- Physicist. This report used certain DOR information to arrive at a reduced value for the subject property. (Exh. R-5, Ryan Testimony.)
13. The DOR provided a land sales comparison report showing five properties with similar attributes, and located in the same neighborhood as the subject property, to support the CALP valuation. (Exh. C.)
  14. Mr. Ryan submitted pictures and testimony opposing the DOR contentions that these properties were comparable to the subject. He argued they are high-end properties located in newer subdivisions. He also contends the subject property is not as valuable because it is in an older, more developed subdivision. (Exhs. R-7 through R-11, Ryan 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. 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 land for tax year 2009. In this instance, we will review whether the DOR properly valued Taxpayer's property for tax purposes.

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).

By law, the DOR is charged with appraising the property at full market value. Section 15-8-111, MCA. The most appropriate way to appraise property is to use the actual sale of the property or to extract data from the market, such as other sales of comparable properties. The DOR used a CALP model based on verified land sales in Neighborhood 855.0, which includes the subject property. In this case, the CALP model indicated a value of \$9.00 per square foot for the first 10,000 square feet and \$2.75 per square foot for each residual square foot. Thus, the subject land was valued at \$159,332 for the 34,848 square foot lot. All the CALP sales occurred prior to the assessment date of July 1, 2008, and were time-adjusted.

The Taxpayer argues the CALP sales are unreliable due to the comparable properties being of a higher quality in newer subdivisions than the

subject property. He also argues the subject property has less value because of where it is situated in an established subdivision.

In response, the DOR claims this residential property, located near Flathead Lake with lake views, is valued appropriately. The DOR testified the evidence presented in the CALP is a long standing appraisal method and, in the appraiser's judgment, accurately values the subject property.

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. No evidence was presented that indicated the subject property suffers from any deficiencies that would affect market value as derived through the use of the CALP.

Therefore, this Board finds and concludes the Taxpayer has not provided evidence that the DOR appraised value for July 1, 2008 is not fair market value.

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 Flathead County at a 2009 tax year value of \$159,332 as determined by the Department of Revenue and affirmed by the Flathead County Tax Appeal Board.

Dated this 1<sup>st</sup> day of June, 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 2nd day of June, 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:

Clarice F. Ryan  
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/s/ \_\_\_\_\_  
DONNA EUBANK  
Paralegal