

BEFORE THE STATE TAX APPEAL BOARD  
OF THE STATE OF MONTANA

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SOLBERG HOLDINGS, L.L.C.,	)	DOCKET NO.: PT-2009-76
	)	
Appellants,	)	
-vs-	)	FACTUAL BACKGROUND,
	)	CONCLUSIONS OF LAW,
THE DEPARTMENT OF REVENUE	)	ORDER and OPPORTUNITY
OF THE STATE OF MONTANA,	)	FOR JUDICIAL REVIEW
	)	
Respondent.	)	

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**Statement of Case**

Solberg Holdings, L.L.C. (Taxpayer) appealed a decision of the Flathead County Tax Appeal Board (CTAB) relating to the Department of Revenue’s (DOR) valuation of their property identified as Section 25, Township 31N, Range 22W, Glenwood Estates 1, a major subdivision of 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 matter was heard before the State Tax Appeal Board on the record.

The Board having fully considered the testimony and exhibits from the record made before the Flathead County Tax Appeal Board and all matters presented to this Board, 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

Solberg Holdings, L.L.C. 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 Submitted

1. Due, proper and sufficient notice was given of this matter. Both parties were afforded the opportunity to submit additional written material to the Board.
2. The subject property is 1.46 acres with 220 feet of Whitefish lake frontage and extends 289 feet back from the waterfront, with the following legal description:

Section 25, Township 31N, Range 22W, Glenwood Estates 1, a major subdivision of Flathead County, State of Montana.. (Exh. B.)
3. The Taxpayer was represented at the Flathead CTAB hearing by E. Jane Solberg. (CTAB Sign-in Sheet.)
4. The DOR was represented at the CTAB hearing by Don Leuty, DOR Appraiser. (CTAB Sign-in Sheet.)
5. For tax year 2009, the DOR originally appraised the subject property at a value of \$4,201,087 (a land value of \$3,817,152 and improvements valued at \$383,935. (DOR Exh. A.)
6. The DOR used the cost approach to value the improvements and a CALP (Computer Assisted Land Pricing) model to value the land, as of the July 1, 2008 appraisal date. (DOR Exhs. B and D.)
7. The CALP in this instance is based on 53 lake frontage land sales. The CALP sales and the subject property are all located in Neighborhood 250, which is a geographic area designated by the DOR as having similar

- characteristics for purposes of valuation. In this instance, all the properties are located on Whitefish Lake with lake frontage. (Exh. D.)
8. During the CTAB hearing, the DOR appraiser testified he also used comparables sales in order to confirm the CALP values. (Leuty CTAB Testimony.)
  9. The Taxpayer argued for a value of \$348,652: \$149,422 for the land and \$199,230 for the improvements based on the last appraisal cycle. (Appeal Form attachment letter, 5/23/10.)
  10. The Taxpayer filed a Request for Informal Review (AB-26) on September 18, 2009. During the AB-26 process, the DOR made adjustments to the value of the land and the improvements. This adjustment resulted in a reduction of \$1,104,242. (Exh. A & B, CTAB Exh. A, Leuty Testimony.)
  11. The Taxpayer filed an appeal with the Flathead CTAB on March 12, 2010. (Appeal Form.)
  12. The Flathead CTAB heard the appeal on May 18, 2010, and upheld the DOR's revised value of \$3,096,845 for the subject property. (\$2,770,970 land value and \$325,875 improvement value. (Appeal Form, Exh. B.)
  13. The Taxpayer appealed to this Board on May 23, 2010, attaching a letter and a list of concerns about the appraised value. (Appeal Form.)
  14. The Taxpayer submitted an appraisal of the subject property as of November of 2005, showing an estimated value of \$2,700,000. (Appeal Form Attachment.)
  15. In an effort to show the improvements are not valued properly, the Taxpayer submitted a home inspection prepared by Eagle Home Inspection, Inc. which was completed on December 13, 2006. (Appeal Form Attachment.)

## 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. For the taxable years from January 1, 2009, through December 31, 2014, all class four property must be appraised at its market value as of July 1, 2008. ( ARM 42.18.124(b).)
5. For an independent appraisal to be considered, the taxpayer or the taxpayer's agent must meet the following requirements:
  - (a) submit a signed original long-form narrative appraisal, performed by an appraiser licensed by the state of Montana, or an appraiser who has been certified by a nationally recognized appraisal society or institute, to the local department office in the county where the property is situated;
  - (b) have a valuation date within six months of the base-year valuation date for the appraisal required in (1) (a) , or be adjusted by the department or the appraiser who performed and prepared the narrative appraisal to reflect changes in market conditions between the appraisal date and the base-year valuation date. (ARM 42.20.455(1).)
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 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 DOR appraised the subject property using standard methodologies, including comparable sales and cost analysis, to determine market value. *See* 6&7. At the CTAB hearing, the DOR appraiser testified he reviewed the subject property and determined there were some deficiencies, such as shallow shoreline and deferred maintenance on the improvements, requiring adjustments. Adjustments were made to both the land and the improvements, reducing the subject property by \$1,104,242. He then verified his adjusted value with other comparable sales on Whitefish Lake. The appraiser also testified the property was very attractive, in a very good location and therefore, he considered the adjusted DOR values to be correct. We find the DOR appraiser and the evidence presented to be credible, and we find no substantial errors in the DOR's valuation.

Further, we find that the Taxpayer failed to provide any evidence that the value set by the DOR is not market value. The Taxpayer attempts to contradict the DOR's value by submitting an appraisal completed in November of 2005. All taxable class four properties in Montana, however, must be

appraised at its market value as of July 1, 2008 for the current appraisal cycle. Even though this appraisal was an original long-form narrative appraisal, performed by an appraiser licensed by the state of Montana, this Board cannot give full weight to evidence of valuation that was not done within six months of the valuation date July 1, 2008 or time trended to that date. (*see* POL 4 & 5.) Property values fluctuate with the economic climate and the only way to achieve statewide equalization is to use the same date for all properties being valued. Thus, all taxpayers experience the same increase or decrease and share the tax burden equally. Therefore we cannot consider taxpayer's appraisal as valid to set market value, as it is well before the valuation-date in question and excludes a period of rapid appreciation on Whitefish Lake.

The Taxpayer also contends the DOR has overvalued the improvements based on a home inspection outlining several deficiencies to the subject improvements. The Taxpayer also argues that a home built in 1966 for \$66,000 could not possibly be valued \$325,875 in 2008. We see no indication the DOR has incorrectly valued the improvements. Further, we note the Taxpayer's own appraisal completed in 2005 gave a depreciated value of \$521,133 to the improvements using the same appraisal method as the DOR.

Thus, the Board finds the evidence presented by the DOR did support the values assessed. This Board also concludes the Taxpayer has not provided evidence that the DOR appraised value for July 1, 2008 is incorrect.

Thus it is the opinion of this Board that the assessed value set by the DOR is correct and upheld 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 of \$3,096,845 as determined by the Department of Revenue and upheld by the Flathead County Tax Appeal Board.

Dated this 4th of October, 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 this Order.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 5th 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:

Solberg Holdings, L.L.C.  
567 Kalispell Ave.  
Kalispell, Montana 59937

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DONNA EUBANK  
Paralegal