

**BEFORE THE STATE TAX APPEAL BOARD
OF THE STATE OF MONTANA**

THOMAS A. and DENISE M.)	DOCKET NO.: PT-2009-132
TALARICO,)	
)	
Appellants,)	
)	FACTUAL BACKGROUND,
-vs-)	CONCLUSIONS OF LAW,
)	ORDER and OPPORTUNITY
THE DEPARTMENT OF REVENUE)	<u>FOR JUDICIAL REVIEW</u>
OF THE STATE OF MONTANA,)	
)	
Respondent)	

Thomas A. and Denise M. Talarico (Taxpayers) appealed a decision of the Missoula County Tax Appeal Board (CTAB) relating to the Department of Revenue’s (DOR) valuation of state-owned property located at 1830 Snowmass Drive, Seeley Lake, Missoula County, State of Montana and leased to the Talaricos.

The Taxpayers argue the DOR overvalued the property resulting in an increased state land lease cost, and seek a reduction in value assigned by the DOR. At the State Tax Appeal Board (Board) telephonic hearing held on June 1, 2011, the Taxpayers were represented by Richard Reep, Esq. Both Thomas and Denise Talarico provided testimony and evidence in support of the appeal. The DOR, represented by Amanda Meyers, Tax Counsel, Wes Redden, Area Manager, Candace Jerke, Commercial Appraiser, and John Kenzal, Residential Appraiser, presented testimony and evidence in opposition to the appeal.

The Board having fully considered the testimony and exhibits 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 the proper valuation of land owned by the State of Montana and leased as a cabin site in accordance with §77-1-208, MCA. The market values of the improvements are not in contention in this appeal.

Summary

Thomas A. and Denise M. Talarico are the Taxpayers in this proceeding and, therefore, have the burden of proof. Based on a preponderance of the evidence, the Board modifies the decision of the Missoula County Tax Appeal Board.

Evidence Submitted

1. Due, proper and sufficient notice was given of this matter. All parties were afforded opportunity to present evidence, oral and documentary.
2. The property which is the subject of this appeal is real property leased by the Taxpayers from the State of Montana and described as follows:

Lot 13, COS 5140, Seeley Lake Outlet, 1.208 acres on Clearwater River, Section 4, Township 16 North, Range 15 West, County of Missoula, State of Montana. (DOR Exh. C.)
3. For the 2009 reappraisal cycle, the DOR originally valued the subject lot at a value of \$129,120. (DOR Exh. A.)
4. The Taxpayers filed a Request for Informal Review (AB-26) on September 22, 2009. During the AB-26 process, the DOR adjusted the value of the property to \$42,610, based on a letter from the Missoula City-County Health Department concerning the septic system in the floodplain. (DOR Exh. A.)
5. On June 7, 2010, the DOR again revised the assessed value to \$126,686 based on information received from the Department of Natural Resources (DNRC) allowing the Taxpayers to install a septic system on adjacent state

land. (Jerke Testimony, DOR Exh. A.)

6. The Taxpayers filed an appeal with the Missoula CTAB on June 23, 2010, requesting the original revised value of \$42,610, stating:

“We filed AB-26 on Sept. 28, 2009 and received a reduction from \$129,120 to \$42,610 with written acknowledgement from the DOR dated Oct. 26, 2009. On June 7, 2010 another appraiser with the DOR changed the appraised value to \$126,686. We did not request this June 7, 2010 review. In addition, there is a 30 day rule for parties to appeal an assessment and the DOR revised this after more than 7 months.” (DOR Exh. B.)
7. The CTAB held a hearing on October 10, 2010 and upheld the DOR valuation for the subject property. (Appeal Form.)
8. The DOR appraiser testified that the DOR used a Computer Assisted Land Pricing (CALP) model to establish the land value for the subject property. The CALP submitted to the Board is based on sales of 18 river or creek frontage vacant land properties. The sales used in the CALP and the subject property are all located within Neighborhood 24.C, which is a geographic area designated by the DOR as having similar characteristics for purposes of valuation. (Kenzal Testimony, DOR Exh. D.)
9. The CALP established a base acre value of \$84,000 for the first acre and \$10,000 an acre for any residual acreage. (DOR Exh. D.)
10. The property record card indicated a value of \$126,686 for the subject property, and CALP value reflected \$86,080 for the same size property. No testimony or evidence was provided to explain the difference from the valuation determined by the CALP. (DOR Exhs. C & D.)
11. The Taxpayers testified and provided evidence on several issues, including the fact that the property is in a floodplain with building restrictions and that the lot is unable to support a septic system. (Taxpayers’ Exh. X.)
12. The Taxpayers also submitted minutes from the Missoula County Commission hearing where they were denied a variance for their existing

buildings to be located within the floodplain. The Commission required the improvements to be removed from the floodplain. The Taxpayer argues this restricts the property further because of fewer building sites. (Talarico Testimony, Taxpayers' Exh. Y.)

13. The DOR argued the value is for the land only and since the DNRC allowed a septic system to be placed on adjacent property, the value is appropriate. (Redden Testimony.)
14. The Department's Area Manager Redden further testified that he was not aware that the structures were required to be removed, and testified that such removal was irrelevant to the land value.

Principles of Law

1. The State Tax Appeal Board has jurisdiction in this matter. (§77-1-208 (1), MCA, §15-2-302, MCA.)
2. By statute, the Board of Land Commissioners shall set the annual fee based on full market value for each cabin site and for each licensee or lessee who at any time wishes to continue or assign the license or lease. The fee must attain full market value based on appraisal of the cabin site value as determined by the department of revenue. (§77-1-208(1), MCA.)
3. The value may be increased or decreased as a result of the statewide periodic revaluation of property pursuant to §15-7-111, MCA, without any adjustments as a result of phasing in values. (§77-1-208(1), MCA.)
4. The department shall administer and supervise a program for the revaluation of all taxable property. (§15-7-111(1), MCA.)
5. All taxable property must be assessed at 100% of its market value except as otherwise provided. (§15-8-111, MCA.)
6. 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.)

7. 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).)
8. An appeal of a cabin site value determined by the department of revenue must be conducted pursuant to Title 15, Chapter 15 MCA. (§77-1-208(1), MCA.)
9. It is the duty of the state tax appeal board to hear appeals from decisions of the department of revenue in regard to property assessments. (§15-2-201(d), MCA.)
10. 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 argues this valuation for the land is appropriate. The DOR claims there is a designated building site, and the DNRC allowed the Taxpayers

to build a septic system on an adjacent lot. Thus the subject property should not be discounted for any deficiencies.

The Taxpayers testified and submitted evidence that a large portion of the property is encumbered by the floodplain, and they are required to relocate the improvements because of it. Furthermore, the Taxpayers brought evidence there is no suitable building site and the lot cannot support a septic system. (See EP# 12.) They also argue the assessed value determined by the DOR is much too high considering the negative influences.

The statewide reappraisal requires the DOR to use mass-appraisal techniques 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 submitted was based on 18 river and creek front land sales to determine the value of property within the subject neighborhood. This CALP model used an acre method to determine a value, which is a standard method in determining lot valuation. The CALP submitted by the DOR, however, does not reflect the value they placed on the subject property. In fact, the value listed on the property record card is \$126,686. (See EP #10), and the value derived from the CALP would be \$86,080 for the same sized property. Neither the property record card nor the CALP indicated any influence factor to account for the disparity, and no evidence was presented relating to discrepancy, which is over \$40,000 less than the value determined by the DOR. We find this to be a substantial error.

Thus, the Board finds the evidence presented by the DOR did not support the value assessed. The lack of credible evidence supporting the DOR value, combined with the testimony and evidence of the Taxpayers relating to legal restrictions on the property which were unknown to the DOR at the time

of valuation leads this Board to find and conclude the \$42,610 requested by the Taxpayers to be an accurate value.

Thus, it is the opinion of this Board that the assessed value set by the DOR and upheld by the Missoula County Tax Appeal Board be modified.

Order

IT IS THEREFORE ORDERED by the State Tax Appeal Board of the State of Montana that the subject property value shall be set at a 2009 tax year value of \$42,610 as requested by the Taxpayer.

Dated this 22nd 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 this Order.

Certificate of Service

The undersigned hereby certifies that on this 23rd 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:

Thomas A. & Denise M. Talarico	<input checked="" type="checkbox"/> U.S. Mail, Postage Prepaid
2875 Humble Road	<input type="checkbox"/> Hand Delivered
Missoula, MT 59804	<input type="checkbox"/> E-mail

Wes Redden	<input checked="" type="checkbox"/> U.S. Mail, Postage Prepaid
John Kenzal	<input type="checkbox"/> Hand Delivered
Missoula County Appraisal Office	<input type="checkbox"/> E-mail
2681 Palm Street, Suite 1	<input type="checkbox"/> Interoffice
Missoula, Montana 59808-1707	

Amanda Myers	<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	

Dale Jackson, Chairman	<input checked="" type="checkbox"/> U.S. Mail, Postage Prepaid
Missoula County Tax Appeal Board	<input type="checkbox"/> Hand Delivered
2160 Nuthatch	<input type="checkbox"/> E-mail
Missoula, Montana 59808	

/s/ _____
DONNA EUBANK
Paralegal