

BEFORE THE MONTANA TAX APPEAL BOARD

Thayer Development, LLC,

Appellant;

v.

State of Montana,

Department of Revenue,

Respondent.

CASE No: PT-2015-40

Findings of Fact,

Conclusions of Law,

Order, and

Opportunity for Judicial Review

Before the Board is Appellant Thayer Development, LLC's appeal from the Cascade County Tax Appeal Board's decision upholding Respondent State of Montana, Department of Revenue's valuation of Thayer's 17 properties in Great Falls at:

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1. 109 Ridge View Dr.; geocode 02-3015-26-1-07-05-0000; legal description
Prairie Ridge Estates, S26, T20 N, R03 E, Block 1, Lot 3; Property A1;
2. 117 Ridge View Dr.; geocode 02-3015-26-1-07-09-0000; legal description
Prairie Ridge Estates, S26, T20 N, R03 E, Block 1, Lot 5; Property A2;
3. 121 Ridge View Dr.; geocode 02-3015-26-1-07-11-0000; legal description
Prairie Ridge Estates, S26, T20 N, R03 E, Block 1, Lot 6; Property A3;
4. 125 Ridge View Dr.; geocode 02-3015-26-1-07-13-0000; legal description
Prairie Ridge Estates, S26, T20 N, R03 E, Block 1, Lot 7; Property A4;
5. 129 Ridge View Dr.; geocode 02-3015-26-1-07-15-0000; legal description
Prairie Ridge Estates, S26, T20 N, R03 E, Block 1, Lot 8; Property A5;
6. 131 Ridge View Dr.; geocode 02-3015-26-1-07-17-0000; legal description
Prairie Ridge Estates, S26, T20 N, R03 E, Block 1, Lot 9; Property A6;
7. 135 Ridge View Dr.; geocode 02-3015-26-1-07-19-0000; legal description
Prairie Ridge Estates, S26, T20 N, R03 E, Block 1, Lot 10; Property A7;
8. 139 Ridge View Dr.; geocode 02-3015-26-1-07-21-0000; legal description
Prairie Ridge Estates, S26, T20 N, R03 E, Block 1, Lot 11; Property A8;
9. 201 Ridge View Dr.; geocode 02-3015-26-1-07-23-0000; legal description
Prairie Ridge Estates, S26, T20 N, R03 E, Block 1, Lot 12; Property A9;
10. 205 Ridge View Dr.; geocode 02-3015-26-1-07-25-0000; legal description
Prairie Ridge Estates, S26, T20 N, R03 E, Block 1, Lot 13; Property A10;
11. 213 Ridge View Dr.; geocode 02-3015-26-1-07-27-0000; legal description
Prairie Ridge Estates, S26, T20 N, R03 E, Block 1, Lot 14; Property A11;

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12. 209 Ridge View Dr.; geocode 02-3015-26-1-07-29-0000; legal description Prairie Ridge Estates, S26, T20 N, R03 E, Block 1, Lot 15; Property A12;
13. 136 Ridge View Dr.; geocode 02-3015-26-1-09-03-0000; legal description Prairie Ridge Estates, S26, T20 N, R03 E, Block 2, Lot 1; Property A13;
14. 102 Ridge View Dr.; geocode 02-3015-26-1-09-03-0000; legal description Prairie Ridge Estates, S26, T20 N, R03 E, Block 2, Lot 2; Property A14;
15. 110 Ridge View Dr.; geocode 02-3015-26-1-09-05-0000; legal description Prairie Ridge Estates, S26, T20 N, R03 E, Block 2, Lot 3; Property A15; and,
16. Gene Thayer's personal property at 220 Southridge Ct.; geocode 02-3015-25-2-02-03-0000; legal description Southridge First Addition, S25, T20 N, R03 E, Block 1, Lot 4A, 1795, 3097, PL42-08. Property A16. Mr. Thayer appeals only the appraised value of the land on this parcel, not the value placed on the residence.
17. 113 Ridge View Dr.; geocode 02-3015-26-1-07-07-0000; legal description Prairie Ridge Estates, S26, T20 N, R03 E, Block 1, Lot 4;¹

¹ 113 Ridge View Dr. geocode 02-3015-26-1-07-11-0000; legal description Prairie Ridge Estates, S26, T20 N, R03 E, Block 1, Lot 5: There appears to be some confusion as to the number of individual parcels under appeal. The parcel described as 113 Ridge View Dr. noted above, appeared to be included in the appeal here. However, it was dropped from the appeal at the County Board level. See Cascade County Tax Appeal Board TR: 5: 10-25. See also Department's Exhibits B and E. Thus, it's value was not at issue here.

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ISSUE

18. Whether DOR properly valued the above properties.
19. Appellant Taxpayer contended that the 15 undeveloped lots (without houses, but with streets and infrastructure) and the lot his residence is located on were wrongly described as view lots and thus overvalued (in most cases approximately doubling in value) for purposes of this appraisal cycle.
20. Respondent Department of Revenue contended that the properties were properly described and that the appraised values set by the Department and affirmed by the Cascade County Tax Appeal Board represented the fair market value of these lots as of January 1, 2014.

FINDINGS OF FACT

21. The Board conducted a hearing at 600 N. Park Ave, Helena at 1:30 PM on June 23, 2016 at which the following were present:
 - a. Gene Thayer, pro se taxpayer;
 - b. Greg Thayer, pro se taxpayer;
 - c. Mark Macek, as witness for taxpayer;
 - d. Elizabeth Roberts, attorney for DOR;
 - e. Laura Quick, DOR appraiser, as witness for DOR;
 - f. Jason Boggess, DOR regional manager, as witness for DOR.

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22. The record includes all materials submitted to the county tax appeal board, the transcript of the hearing at the county tax appeal board, additional materials submitted by the parties at the hearing, as well as testimony of the witnesses at the hearing.
23. Mr. Gene Thayer testified at the Cascade County Tax Appeal Board that he developed the subdivision and improved the lots by developing a brand new water and sewer district. CTAB Hrg. Transcr. 4: 1-25. The cost of these improvements is \$5,687 per lot, due at the time of sale. Id. 16: 13-25. He also testified that since he had purchased the acreage and put it up for sale he had sold only three lots and received only one other offer. Id. 3: 20-25.
24. Thayer testified in front of this Board that the properties were purchased by him in 2006. MTAB H'rg. Tr. 15: 17-22. He further testified that none have been sold since then, except for the unique sales of two lots and one other that was part of a "spec house." Id. 7:24-25 and 8: 1-2. He ultimately thought that it would be necessary to drop the prices again on the remaining lots in order to get a sale. Id. 40: 23-25; 41: 1-19.
25. Thayer testified that he has paid property taxes for many years, but this is his first appeal and he brought it because of the approximate doubling of the appraised values, which he deemed "out of whack." Id. 8: 11-16. Finally, he testified that the DOR was in error when it determined that all of the lots were "view lots" which resulted in values above fair market value. Id. 13: 12-25.
26. Greg Thayer questioned the conclusions of the Department and introduced Taxpayer's Exhibit 2 which showed MLS, sales prices, an

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Excel spreadsheet and a property tax valuation analysis. Id. 17: 1-25 and 18: 17-25.

27. Mark Macek, an experienced real estate broker in Great Falls testified next for the taxpayer. Id. 20:2-6. He is not an appraiser, but has a Bachelor's degree in construction engineering and an MBA. Id. 32: 11-23. Macek prepared Ex. 4 which showed the appraised value set by the Department and included references to sales of properties Macek chose as comparables. He obtained the sales prices from the MLS listings in Great Falls, not realty transfer certificates. He did not adjust the prices he calculated for purposes of the January 1, 2014 appraisal date. Id. 33: 6-22.
28. Macek summarized the taxpayer's objections to the department's appraisals as the lots that were used as comparables were not comparable sales, there was a lack of sales activity on the subject lots, inconsistency in evaluation and the values were improperly based on the perceived view characteristics of the subject lots. Id. 22: 1-5.
29. Macek testified that lots 11-14 had no river views. Id. 22: 12-20, Ex. 4. The view from lot 10 was into power lines. Lots 4-9 were located at the same elevation as the nearby Pierson subdivision lots. Lots 3 and 4 looked into power lines and an adjacent railroad track. Id. 23: 8-22. Lots 14-16 did not have comparable views to the properties selected by the department located in the Belleview and Whispering Ridge subdivisions. Id. 24: 1-19 and 25: 1-25. The Pierson lots are adjacent to the subject lots. The Belleview and Whispering Ridge properties are located two to four miles away from the subject lots.

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30. Macek calculated the values for each of the lots found in Ex. 4 by using the taxable values represented in the State of Montana cadastral property value database and dividing those values by the square footage of the lot. He did not calculate values using base and residual figures. Id. 26: 14-25. See also Id. 44: 1-10.
31. The Department argued that the value it determined represented fair market value and was established in accordance with law. Id. 48: 9-12. The first witness was Laura Quick, a residential and commercial appraiser who has been working at DOR since 2009. Id. 15-21. Vacant land is appraised under the sales approach using Realty Transfer Certificates and an investigation to determine if the sale was an arms-length transaction. Id. 49: 8-25.
32. Ms. Quick testified that there was no development on the subject lots and that you could see the river from each of them. Ex. C and MTAB Tr. 56: 8-20. She testified that the Pierson addition lots were down at street level and the Prairie Ridge Subdivision lots were up on a ridge and had a view. Id. 66: 5-14. Thus the lots were not comparable even though they were adjacent to one another.
33. Ms. Quick also testified as to why she believed the properties presented by Mark Macek were not comparable to the Thayer properties, with the primary reasons being that they were in different neighborhoods, did not have developed streets, water, sewer and electrical and did not have views of the river. Id. 71: 11-25. The Department valued all the lots in the subject subdivision as superior view lots, there are no houses present, just lots with views. Id. 84: 10-16.

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34. Although Ms. Quick stated that the Department did not use listing prices to value property, she did admit that the Department uses them to corroborate the values it calculates. Id. 72: 2-10. The Department then spent considerable time pointing out the similarity between the sales prices from the Multiple Listing Service and the DOR appraised values. Id. 72: 11-24, 73 and 74.
35. Ms. Quick testified that the Department cannot consider the possible future uses of the property, but valued it only on its current use. The current use was unoccupied lots with river views. Id. 96: 3-10. Mr. Thayer argued that when the lots are developed with houses, due to elevation changes and the positioning of the houses, there will be no views, thus making them less valuable. Id. 88-90.
36. The final argument by the Taxpayer about the value of the subject lots was based upon the fact that they have been on the market for a long time and are not selling. In fact, it was Mr. Macek's opinion that the lots were "over-priced". Id. 103: 8-23. Macek was of the further opinion that the real estate market in Great Falls during the period of this appraisal cycle was slow and not very active.

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37.

Table 1

Lot	Value Prior to Appraisal Cycle	DOR Value January 1, 2014	Thayer Proposed Value
A1	\$43,477	\$95,426	\$71,534
A2	\$56,401	\$103,315	\$83,676
A3	\$53,369	\$100,308	\$78,414
A4	\$42,077	\$89,110	\$49,014
A5	\$42,068	\$89,100	\$49,000
A6	\$42,068	\$89,100	\$49,000
A7	\$42,068	\$89,100	\$49,000
A8	\$37,143	\$84,216	\$41,877
A9	\$53,596	\$100,534	\$65,674
A10	\$54,608	\$101,537	\$49,955
A11	\$42,205	\$89,237	\$35,142
A12	\$41,334	\$88,373	\$34,242
A13	\$49,306	\$96,278	\$63,716
A14	\$46,682	\$93,677	\$63,628
A15	\$44,926	\$91,934	\$56,928
A16	\$70,064	\$188,119	\$120,190

CONCLUSIONS OF LAW

38. The Board has jurisdiction over this case and its order is final and binding upon all parties unless changed by judicial review. Mont. Code Ann. § 15-2-301
39. To whatever extent the foregoing findings of fact may be construed as conclusions of law, they are incorporated herein.

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40. The taxpayer bears the burden of proving the error of DOR's decision. *Farmers Union Cent. Exch., Inc. v. Dep't of Revenue of State of Mont.*, 272 Mont. 471, 476, 901 P.2d 561, 564 (1995); *Western Air Lines, Inc. v. Michunovich*, 149 Mont. 347, 353, 428 P.2d 3, 7 (1967).
41. However, DOR cannot rely entirely on the presumption in its favor and must present a modicum of evidence showing the propriety of their action. *Western Air Lines*, 149 Mont. at 353, 428 P.2d at 7.
42. "All taxable property must be appraised at 100% of its market value...." Mont. Code Ann. § 15-8-111.
43. "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." Mont. Code Ann. Section 15-8-111(1).
44. "Since market value is defined in Section 15-8-11, MCA...it follows that if market value is to be derived from analyzing comparable sales, that the sales must represent valid 'arm's length' transactions." 2015-2020 Montana Reappraisal Plan, 25 (adopted pursuant to Mont. Code Ann. Section 15-7-111(5)).
45. "Comparable properties used for valuation must represent similar properties with an acceptable proximity of the property being valued." Mont. Code Ann. Section 15-8-111(3).
46. "[F]or the taxable years from ... (c) January 1, 2015, through December 31, 2016, all property classified in 15-6-134, MCA, (class four) must be

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appraised at its market value as of January 1, 2014.” Mont. Admin. R. 48.18.124.

47. “Assessment formulations are within the expertise of the State Tax Appeal Board and [courts] will not overturn their decisions unless there is a clear showing of an abuse of discretion.” *Northwest Land & Dev. of Montana, Inc. v. State Tax Appeal Bd.*, 203 Mont. 313, 317, 661 P.2d 44, 47 (1983) overruled on other grounds by *DeVoe v. Dep't of Revenue of State of Mont.*, 263 Mont. 100, 866 P.2d 228 (1993).

DISCUSSION

48. In this case we are presented with a difficult problem. The Taxpayer bears the primary burden of not only casting sufficient doubt on the method and eventual values that are arrived at by the Department. Having once surmounted that substantial hurdle the Taxpayer is then faced with the task of presenting sufficient credible evidence to support the alternative values developed by the taxpayer or the taxpayer’s witnesses.
49. At first blush the simple size in the increases on semi-improved bare land which has not sold in a number of years certainly bears more scrutiny. The Taxpayer here was certainly within his rights to protest and ask for an explanation. The explanation given prompted the Taxpayer to retain an expert in the Great Falls real estate market to make a study of the values in the subject property and the sale of comparable properties used by the Department.

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50. In this case, the Department chose to use comparable sales in subdivisions located at the far eastern and western edges of Great Falls miles away from the subject lots. The Department decided that the lots and houses on them in the subdivision immediately adjacent to this subdivision were not comparable enough in that they lacked the appeal of river or mountain views and the houses were not of the same quality as those that might yet be built on the Thayer lots.
51. The study by the Taxpayer's expert departed from accepted appraisal practice in that the square foot value of the Thayer and other subdivision lots was calculated by dividing the total area by a price determined by that from cadastrals and/or advertised on the Multiple Listing Service in order to calculate a value per square foot basis. In reviewing the values, the values calculated are in almost all cases more than the values in the prior cycle, but less than those reached by the Department for this cycle. The Department used actual sales data from realty transfer certificates and set base and residual values. The Department also adjusted the values by time trending them to the January 1, 2014 appraisal date.
52. The Department followed standard practice in applying the principles for the mass appraisal of properties. But the die was largely cast when the values in neighborhood number four, including two distant desirable subdivisions, were used instead of comparing the lots in the adjacent subdivision – which wasn't done because it was not in neighborhood four, but on the boundary of that neighborhood.
53. The primary reason given for not comparing adjacent properties was that the subject lots were much preferable because they had river views. Here

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the Board faced directly contradictory testimony from the Taxpayer and the Department. Both sides testified credibly as to the presence or absence of river views. While it is the law that the Department must appraise on current use, and that current use is vacant lots (some with river views and others without), the Department did speculate that the houses that would be built on the subject lots would be substantial structures, not substandard housing.

54. The Board's task then was to review the testimony and the exhibits, which included a plethora of photographs, in order to determine which of the lots did indeed have river views and which had views partially or completely obstructed. Exhibits B and E from the CCTAB hearing contain photographs from the Department, as do Exhibits G, H and A from the hearing here. Thayer's Exhibit 4 from the hearing here also contains images of the views from the subject lots. The Board's next task was to determine the value of the lots using the materials submitted by the parties.
55. The Board finds the calculations by which the Department and the Thayer's arrived at fair market values for the subject properties to be reasonable. The witnesses who testified were credible, one used the mass appraisal process and the others spoke from their experiences and knowledge of the real estate market, the subject properties and the lack of any sales over a number of years. They understandably arrived at different values.
56. When the totality of the evidence is viewed through these lenses, the Board finds that those properties with unobstructed views should be

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valued at the Department's assessed values for January 1, 2014. The Board finds that properties A1, A2, A3, A14 and A16 have unobstructed views and thus should be valued at the Department's appraised values.

57. The Board finds that those properties with obstructed views should be valued at the figures derived by the Taxpayer or the value from the prior cycle, whichever is higher. The following lots fit into this category: A4, A8, A9, A13 and A15.
58. The Board also finds from the evidence that some of the lots have partially obstructed views. Given this situation the properties did not have the higher value set by the Department and also were not appropriately valued at the lower figures proposed by the Taxpayer. The solution, given the evidence we have, is to set a value somewhere in between those extremes, a figure halfway between the Department's number and the Taxpayer's value for this appraisal cycle. The following lots fit into this category: A5, A6 and A7.
59. The Board finds that property A10 to be a lot without a view. However, in this instance the Taxpayer's value for this cycle was less than the appraised value in the prior cycle. Since there was no credible testimony that any of the lots had decreased in value over this time period, the Board has determined the value of this lot to be half-way between the Department's current number and the DOR value from the prior cycle. Lots A11 and A12, have partially obstructed views, but again, the Taxpayer's number for these lots was less than the appraisal value in the prior cycle, so the above formula was applied to these lots as well.

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60. Having thus determined which lots had superior attributes and which had lesser, the Board applied the above described formulas in order to calculate the fair market values of the subject properties. The Board finds that the appraised values for each of the subject properties as set forth in Table 2 to represent the taxable value of these lots for tax years 2015 and 2016.

61.

Table 2

Lot	MTAB Values (figures Rounded)
A1	\$95,426
A2	\$103,315
A3	\$100,308
A4	\$49,014
A5	\$69,050
A6	\$69,050
A7	\$69,050
A8	\$41,677
A9	\$65,674
A10	\$78,072
A11	\$65,721
A12	\$64,853
A13	\$63,716
A14	\$93,677
A15	\$56,928
A16	\$188,119

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ORDER

Thayer Development LLC's appeal and complaint is **granted in part** and **denied in part** according to the findings and conclusions of law as set forth herein. The decision of the Cascade County Tax Appeal Boards is accordingly upheld, modified in part and reversed in part as set forth herein. The Department is ordered to enter the appraised values of the subject lots as set forth in Table 2 for tax years 2015 and 2016.

Notice: You may be entitled to judicial review of this Order by filing a petition in district court within 60 days of the service of this Order. Mont. Code Ann. § 15-2-303(2).

Ordered February 10, 2017.

David L. McAlpin, *Chairman*
MONTANA TAX APPEAL BOARD

Stephen A. Doherty, *Member*
MONTANA TAX APPEAL BOARD

Valerie A. Balukas, *Member*
MONTANA TAX APPEAL BOARD

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Certificate of Service

I certify that I caused a true and correct copy of the foregoing *Findings of Fact, Conclusions of Law, Order, and Opportunity for Judicial Review* to be sent by United States Mail via Print and Mail Services Bureau of the State of Montana on _____, 2017 to:

Thayer Development, LLC

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Elizabeth Roberts

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MONTANA TAX APPEAL BOARD