

BEFORE THE STATE TAX APPEAL BOARD  
OF THE STATE OF MONTANA

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KEREN S. WALES,	)	
	)	DOCKET NO.: PT-2010-14
	)	
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**

Keren S. Wales (Taxpayer) appealed a decision of the Lake County Tax Appeal Board (CTAB) relating to the Department of Revenue’s (DOR) valuation of her lake front property located on and near Flathead Lake in Lake County, State of Montana. The Taxpayer argued the DOR overvalued the property for tax purposes, and seeks a reduction in value assigned by the DOR. At the State Tax Appeal Board (Board) hearing held on February 10, 2011, the Taxpayer represented herself by providing testimony and evidence in support of the appeal. The DOR, represented by Michele Crepeau, Tax Counsel; Scott Williams, Area Manager, and Monty Simonsen, 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

Keren S. Wales 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 Lake County Tax Appeal Board.

### Findings of Fact

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 4 acre lot split by old highway 93. The front portion is 334 feet of Flathead Lake frontage that extends back 67 feet to the old highway, the balance of property is 3.489 acres on the other side of the old highway. The following is the legal description and GEO code:  

Section 10, Township 24N, Range 21W, Block 001, Lot 5,  
Cromwell Villa Site, County of Lake, State of Montana. GEO  
Code 15-3467-10-3-04-09-0000. (Exh. A.)
3. For tax year 2009, the DOR originally appraised the subject property at a value of \$1,662,235 including land and improvements. (Wales Testimony, Exh. B.)
4. 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 \$654,100, reflecting a decrease in land value to \$639,984 due to old highway 93 cutting through the property limiting the depth of the lakeside

portion of the property to 67 feet. The improvement value remained the same at \$14,126. (Simonsen Testimony, Exh. A.)

5. The Taxpayer filed an appeal with the Lake County Tax Appeal Board (CTAB) on August 3, 2010, asking for a value of \$300,000 for the land and \$5,000 for the improvements. The following reasons were stated for the appeal:

“The value is too high based on improvements lacking, and restriction on new building. There is no electricity or w/s to the property.” (Appeal Form.)

6. The Lake CTAB heard the appeal on November 15, 2010.
7. The Taxpayer purchased the subject property in 1985 and has maintained it in its original condition, other than upgrading the dock three years ago. Currently the property has no well, septic system or electricity which limits the development potential. (Wales CTAB Testimony.)
8. The Taxpayer submitted a development analysis completed by Carver Engineering, a Consulting Civil Engineer in Kalispell, Montana, on October 6, 2010. According to this analysis, Carver Engineering’s opinion is that the development potential for single residential construction is extremely limited due to the rocky steepness of the lot and the value of the property would be diminished. (Exh. 1.)
9. The CTAB modified the DOR value on the land to \$460,000 and decreased the improvement value to \$5,000 based on Taxpayer’s appeal. (Appeal Form.) The Taxpayer appealed to this Board on December 22, 2010, stating:

“The appraisal is still too high, based on Carver Engineering assessment of restricted access. Comparables didn’t address this. The value did not raise four times the 2003 appraisal value. New independent appraisal is forth coming.” (Appeal Form.)

10. The value of the improvements are no longer in contention. (Wales Testimony.)
11. The DOR used a Computer Assisted Land Pricing model (CALP) to value the subject property. A CALP model determines a property value based on the sales of land in the nearby area. The CALP derived a land value for the subject property of \$639,984. The CALP in this instance is based on 16 lake frontage land sales. The CALP sales and the subject property are all located in Neighborhood 302.5, 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 \$6,110 per foot for the first 100 linear feet of waterfront property and \$2,280 a linear foot for any residual footage (any lot with over 100 feet of lakeshore.) A depth adjustment was calculated for the subject property to reflect the actual 67 foot depth as opposed to the standard 250 feet used in the CALP. (Williams Testimony, Exhs. H and post hearing submission.)
12. All of the sales in the CALP are derived from water-front lots in the same neighborhood on Flathead Lake. (Williams Testimony, Exh. H.)
13. The DOR provided a comparable sales report showing three properties with similar attributes and located very near the subject property and two properties in the same neighborhood as the subject property to support its valuation. (Exhs. E, F and G.)

#### **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 property classified in §15-6-134, MCA, (class four) must be appraised at its market value as of July 1, 2008. (ARM 42.18.124(b).)
5. Residential lots and tracts are valued by the Department of Revenue 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 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.)

### **Findings of Fact, 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. 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 Department is required to value all property at 100% of market value and does this by using mass appraisal methodologies. In this case, the DOR used a CALP model based on 16 Flathead Lake water-front land sales. From this sample, the Department calculated a value for the subject property based on the front-foot method for valuation – essentially valuing the property based on the number of feet of waterfront. (*See* FOF 11.) During the informal review of the property, the Department lowered that value, and the county tax appeal board further lowered the value of the property.

The only evidence the Taxpayer submitted to contradict the Department's value was a 2010 development analysis of the subject property, prepared by a civil engineer. (*See* FOF 8.) The only justification the Taxpayer used to set the \$300,000 value on the subject land was that is what she considered the value to be. The Board does not find this information sufficiently credible in determining a lower market value as of July 1, 2008.

The property does suffer from several deficiencies that lower its marketability. For example, the lake-front property is narrow and suffers from restricted access and building opportunities. The property is divided by a local road, and the upper portion of the property is not currently accessible because of the steep, rocky landscape. The property, however, does have lake access and is large enough for future building. A review of the evidence presented indicates that the county tax appeal board duly considered this evidence and reduced the value of the property in consideration of its deficiencies. We see no evidence presented to further reduce the value of the subject property.

We uphold the CTAB decision.

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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 \$465,000 as determined by the Lake County Tax Appeal Board.

Dated this 22<sup>nd</sup> day of February, 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 23<sup>rd</sup> day of February, 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:

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