

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

LYNN and DONNA WEAVER,)	DOCKET NOS.: PT-2010-16
)	through PT-2010-18
Appellants,)	
)	FACTUAL BACKGROUND,
-vs-)	CONCLUSIONS OF LAW,
)	ORDER and OPPORTUNITY
DEPARTMENT OF REVENUE)	FOR JUDICIAL REVIEW
OF THE STATE OF MONTANA,)	
)	
Respondent.)	

Lynn and Donna Weaver (Taxpayers) are the owners of three parcels in Lake County who challenge the valuation of the Department of Revenue (DOR) of those properties. The Lake County Tax Appeal Board (CTAB) lowered the values of each of the three lots and Taxpayers further appealed to this Board. The matter was set to be heard on the record without objection, notice to the parties was given and an opportunity was given to submit materials for consideration. The proceedings of the CTAB below, with Exhibits and testimony, is hereby incorporated in the record before us along with the letter and materials submitted by Taxpayers on February 16, 2011 and by the DOR on February 3 and February 22, 2011.

Evidence Presented

Taxpayers are the owners of three lots in Stone Wall Estates in Lake County, Geocodes 15-3350-31-2-02-04-0000 (Lot 4), 15-3350-31-2-02-03-0000 (Lot 3), and 15-3350-31-2-02-24-0000 (Lot 24). The lots are .522 acres, .561 acres and .5 acres, respectively, and none of the lots have any improvements.

(Property Record Cards, DOR Exhs. A, B, C.) The DOR appraised the lots at \$142,879, \$143,060 and \$142,778.

The Taxpayers requested an informal review on September 1, 2009 stating:

I purchased this lot @ an extremely well advertised worldwide auction by Richie Bros. Auctioneers, Inc. The date of this purchase was 4-11-08 which was prior/close to your reappraisal date of 7-1-08. I want you to lower the market value as of 7-1-08 to the purchase price of \$55,000 [\$60,000] [\$55,000]. Copy of purchase agreement attached.

(AB-26 Forms, DOR Exhs. D, E and F.)

The DOR appraiser reviewed the land values and reduced the value of Lot 4 to \$107,160, the value of Lot 24 to \$107,295 and the value of Lot 3 to \$107,083, specifically stating, however, that auction sales are not considered.

(Appeal Forms.) Taxpayers appealed to the County Tax Appeal Board, stating:

We disagree with the comparable sales used by the department of revenue & we want the board to consider using some auction sales to help determine the lot value.

(Property Tax Appeal Form, DOR Exh. G.)

At the CTAB hearing, Taxpayers challenged the comparable sales used by the DOR to value the parcels. First, they argue that two of the three lots in the Land Sales Comparison (DOR Exh I) have incorrect sale prices on them. The Taxpayers presented sale contract documents showing the actual sale price of one was \$105,000 less a \$40,000 offset, so that the actual price was \$65,000; the second was nominally for \$210,000, but had a condition precedent added to it that set the actual price at \$135,000 if the buyer managed to resell. It was never resold and so the initial sale contract failed, the land was never transferred and no funds were paid. The third sale in the comparison was a legitimate sale for \$110,000 on June 1, 2006. The DOR derived a price per square foot from these three sales and time-trended the prices, adding nine

percent per year (DOR Exh. K), to arrive at the initial valuation of the three subject lots.

Taxpayers testified that no lots sold after the 2006 sale until the remaining lots were offered at auction on the internet by Richard Brothers Auction, resulting in the sale of eight lots on March 13, 2008. Taxpayers bought three of those lots and the others sold to five other individuals. The eight lots sold for \$55,000, \$55,000, \$57,500, \$60,000, \$70,000, \$60,000, \$65,000 and \$60,000, for an average price of \$60,312. The auction was not a tax sale or foreclosure and no additional funds were due to any third parties upon conclusion of the auction. The seller of the lots, Mr. Lonnie Haack, testified this was not a distressed sale. “We just decided to do this for cash flow because we wanted to finish the other phase, and so we knew that we could go ahead and sell some lots right away and get money right away instead of just prolonging it. So, I feel that this should be counted as a legitimate sale and it should be arm’s length.” (CTAB transcript, page 14, line 10.)

The Weavers argued that the DOR should consider the auction sales, which occurred just a few months before the appraisal date of June 30, 2008, rather than the sale two years earlier in 2006 which occurred at the peak of the market.

The DOR appraiser, Lynn Cordone, testified the DOR does not get the buy-sell agreements and so was unaware of the special modifications on two of the three sales in their land sale comparison. Furthermore, she testified the DOR was barred from considering auction sales by the past decisions of this Board. She presented a copy of the Board’s decision in *Higgins v. DOR*, 1998 Mont. Tax LEXIS 78. She further stated the DOR procedures did not contain any such written rule but that it is generally the practice of the DOR to not use auction prices.

The CTAB reduced the values of the Lots 3 and 4 to \$81,000 and the value of Lot 24 to \$86,000. Taxpayers filed a timely appeal with this Board. The matter was heard on the record.

Issue on Appeal

The issue presented by this case is whether the DOR overvalued the Taxpayers' three vacant lots by not using the auction sale prices as comparables.

Applicable Law

1. All taxable property must be assessed at 100% of its market value except as otherwise provided. Section 15-8-111(1), MCA.
2. 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. Section 15-8-111(2)(a), MCA.

Findings of Fact, Board Discussion and Conclusions of Law

At issue is whether auction sales are acceptable evidence of market value. This case presents a clear question of the interpretation of this Board's past decisions and also presents an opportunity to explain and develop the rule applied by the DOR in this case. Although the DOR appraiser stated they are barred from considering auction prices because of decisions of this Board, our review of the legal cases does not support such an absolute rule.

Montana law requires that the DOR value property at market value, defined as the price set by a willing buyer and a willing seller, both operating without compulsion and, presumably, at arm's length. Many of the cases in which auction values have been rejected by this Board, or by other courts,

involve foreclosure or bankruptcy sales. These are situations in which the seller is under a compulsion to sell, so one of the necessary elements of a valid market price is missing. For example, in *Eggebrecht & Richter v. DOR*, 1989 Mont. Tax LEXIS 113, this Board said “It is commonly accepted appraisal principle that an auction sale is not in and of itself absolutely definitive of market value, although it may be an indication of value when supported by substantial evidence.” (Id at 4.) The Board relied on a Kansas Supreme Court decision¹ defining market value as

[T]he fair value of the property as between one who wants to purchase and one who wants to sell, not what could be obtained under peculiar circumstance when a greater than its fair price could be obtained, nor its speculative value; not a value obtained from the necessities of another, **nor, on the other hand, is it to be limited to that price which the property would bring when forced off at auction under the hammer.** It is what it would bring at a fair public sale, when one party wanted to sell and the other to buy. (Emphasis added)

It is clear the auction price in that case was regarded as an atypical value because it was established in a distressed sale.

In several cases before this Board, the evidence demonstrated that the auction was either not an arm’s length transaction, or did not have a willing seller. For example, in *Rocky Plaza Association v. DOR*, 1986 Mont. Tax LEXIS 324, this Board rejected the prices of condominium units purchased at auction as establishing market value because two of the units were purchased by members of the group that owned the units, so the sales were not at arm’s length.

In *Big Sky Forest Products v. DOR*, 2000 Mont. Tax LEXIS 51, when the Small Business Administration foreclosed and subsequently sold the property at auction, the Board stated “It is the opinion of the Board that the auction sale or

¹ *Kansas City, W. & N.W.R. Co. v. Fisher*, 49 Kans 17, 18 (1892.)

foreclosure is an atypical transaction. Based on the evidence . . . the SBA is not a willing seller.” (Id at 19.) In a related case involving the same taxpayer, the Board’s discussion pointed out there were several reasons for rejecting auction prices. First, the property was not on the market for a reasonable length of time. Second, at an auction (here a foreclosure) the seller was under a compulsion to sell. Finally, the business was being sold piecemeal and “facilities that are in operation carry a higher value than those that are vacant.”

In *F.O. Duffy v. DOR*, 1989 Mont. Tax LEXIS 295, the Board rejected evidence of an auction price in a tax deed sale as it “indicates some compulsion to sell on the part of the seller.” Tax deed sales are atypical in that the original owner retains the right to repurchase the property from the buyer for several years after the sale, which would necessarily lower the market value.

Finally, we note that the case cited by the DOR at the CTAB hearing, *Higgins v. DOR*, 1998 Mont. Tax LEXIS 78, has several features that distinguish it from the present case. First, the taxpayer was arguing that the price he paid when he bought the land at auction in 1992 should be the property’s value in 1997, so the sale was not close to the valuation date and was not, therefore, good evidence of the 1997 value. Second, three of the units sold in the 1992 auction had been resold at significantly higher prices before the 1997 valuation date, so the DOR had more recent data. Third, the Board noted the 1992 sale prices were actually lower than the DOR’s 1990 market values. In all, the Board concluded the evidence showed the auction prices were not good evidence of market price in that case.

While there are cases in which a simple rejection of auction sale prices was stated by this Board ² as not being arm's length transactions or stating that appraisal practice does not consider auction prices to be valid indicators of value, we note the auctions in question were sheriff's sales or foreclosures. Those distressed sales are different enough from the internet auction in the present case to require careful distinction. The real issue is whether the circumstances of the auction suggest a lack of arm's length contracting practice or a compulsion on the seller so as to prevent the price obtained from being considered fair market value. This Board, therefore, rejects the contention of the DOR that our decisions impose a blanket prohibition on the use of auction sale data in valuing property. Rather, the review of the auction must be based on the evidence before the Board.

In the case before us, we find there was no compulsion on the seller to sell at auction. The evidence showed there was no foreclosure or tax sale, no unpaid debts to be satisfied. The seller himself testified that it was not a distressed sale and that he simply decided to auction the lots to obtain the cash to move forward with the rest of the land development.

The evidence shows the properties were publicly sold on the internet by an auction company after a reasonable length of advertisement, not on the courthouse steps by the sheriff. It is self-evident that the internet is a convenient way to reach a large number of potential buyers and is increasingly used in real estate transactions. In this case, the evidence demonstrated there

² See, e.g., *Big Sky Bible College v. DOR*, 1988 Mont. Tax LEXIS 388; *Floyd & Brian Bossard v. DOR*, 1989 Mont. Tax LEXIS 317; *Bitter Root Plumbing v. DOR*, 1990 Mont. Tax LEXIS 62; *Wadsworth Ltd. V. DOR*, 1996 Mont. Tax LEXIS 6; *Hucke v. DOR*, 1988 Mont. Tax LEXIS 1173, *Fradet v. DOR*, 1995 Mont. Tax LEXIS 120, *Farmers Grain Terminal v. DOR*, 1992 Mont. Tax LEXIS 28, *Hageman Elevator, Inc. v. DOR*, 1992 Mont. Tax LEXIS 24.

were six unrelated buyers and the prices were all closely similar. We find no evidence that this sale was not an arm's length transaction or that the seller was under any compulsion. Nor do we find any evidence in either the auction process or the prices paid by the Taxpayers of a developer's discount being given for the purchase of multiple lots, as was suggested at the CTAB hearing. Finally, the auction occurred just a few months before the valuation date of July 1, 2008 while the only valid previous sales had occurred before 2006. The fact that the auction prices were lower than the pre-2006 sales, and the prices seller had hoped for, could simply reflect the realities of market fluctuation which are ordinarily difficult to quantify in land valuation cases if there are no sales of comparable properties close to the valuation date.³

In this case, however, evidence exists to measure the decline in values. At the auction there were eight sales on the open market by a willing seller not under any compulsion to sell and those sales are very close to the valuation date. We find those sales constitute better evidence of value than the sales occurring two years prior to the valuation date because the lack of sales between 2006 and the valuation date in 2008 makes the accurate trending of sale prices difficult.

We find the Taxpayers have submitted convincing evidence, undisputed by the DOR, that two of the three comparable sales used by the DOR did not use a correct sale price and the third sale was at the peak of the market, while the values paid at auction are good evidence of the property values at the statutory valuation date. Taxpayers paid an average price of \$56,666 for their three lots, very close to the average price paid for all eight lots, \$60,312, so we

³ The taxpayer submitted a real estate buyer's guide showing market prices peaked in 2005 – 2006 and declined thereafter.

find the prices paid at auction are a good indication of the value of the parcels on the July 1, 2008 valuation date. We grant Taxpayers the valuation they have requested on their three lots. The decisions of the Lake County Tax Appeal Board are modified.

Order

IT IS THEREFORE ORDERED by the State Tax Appeal Board of the State of Montana that the subject property shall be entered on the tax rolls of Lake County by the local Department of Revenue at a value of \$60,000 for Lot 24, \$55,000 for Lot 3 and \$55,000 for Lot 4, as determined by the State Tax Appeal Board.

Dated this 8th of March, 2011.

BY ORDER OF THE

STATE TAX APPEAL BOARD

(S E A L)

/s/ _____
KAREN E. POWELL, Chairwoman

/s/ _____
DOUGLAS A. KAERCHEK, 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 8th day of March, 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/ _____
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