

BEFORE THE STATE TAX APPEAL BOARD
OF THE STATE OF MONTANA

TERRY BEST/GORDON CAMPBELL)	
)	DOCKET NO: PT-1998-25
Appellants,)	
)	
-vs-)	
)	FACTUAL BACKGROUND,
THE DEPARTMENT OF REVENUE)	CONCLUSIONS OF LAW,
OF THE STATE OF MONTANA,)	ORDER and OPPORTUNITY
)	FOR JUDICIAL REVIEW
Respondent.)	

The above-entitled appeal was heard on September 9, 1999, in the City of Missoula in accordance with an order of the State Tax Appeal Board of the State of Montana (the Board). The notice of the hearing was given as required by law.

The taxpayers, represented by Gordon Campbell and JoAnn Best, presented testimony in support of the appeal. The Department of Revenue (DOR), represented by James Fairbanks, regional lead appraiser, and Ronald Pierson, commercial appraiser, presented testimony in opposition to the appeal. Testimony was presented and exhibits were received. The Board then took the appeal under advisement; and the Board having fully considered the testimony, exhibits and all things and matters presented to it by all parties, finds and concludes as follows:

FACTUAL BACKGROUND

The property which is the subject of this appeal is described as follows:

Land only described as a cabin site, Lot 2, East Shore, Clearwater Outlet, Seeley Lake, 1.38 acres, Section 10, Township 16 North, Range 15 West, State of Montana.

The Department of Revenue appraised the land at a value of \$27,274.

The taxpayer appealed to this Board on October 26, 1998 requesting a value of \$11,164, attaching two pages of reasons for appeal.

TAXPAYERS' CONTENTIONS

Mr. Campbell stated he has leased the subject land from the Department of Natural Resources and Conservation (DNRC) since 1976.

Mr. Campbell cited the reasons for appeal, which were contained in a letter written to the Department of Revenue during his initial request for review of the subject assessment:

I believe the appraisal is not correct for this particular property. First, the value appears to be calculated using a \$30,000 per acre value for the first acre, and an \$800 per acre for additional acreage. I agree that a home site land area is worth more than non-home site property but I think it is stretch of logic to determine that the home site land is worth forty times what the non-home site land is worth. Using this type of valuation and logic obviously results in a very high appraised value. Also, of the listings I have

accumulated of similar properties on the Double Arrow Ranch, all are over one acre yet all of the properties are listed for less than \$30,000, the figure used by the assessor's office for the value of the first acre. Based upon this information, I believe that the \$30,000 value for the first acre is much too high.

Secondly, this particular property is located in Dogtown at Seeley Lake. The area is not new, and most of the improvements are very old cabins and mobile homes. I was informed by the county assessor's office that in the accumulation of fair market values, there were no sales of properties in Dogtown. I don't believe the sales information used by the assessor's office is comparable to my property if it does not include any "Dogtown" sales information. For example, properties from the Double Arrow Ranch are populated by expensive homes and have new improvements, thus the land is more valuable. My conclusion is that the value of land in Dogtown is less than the fair market values used in the assessor's office analysis.

Third, I analyzed the fair market value information used by the assessor's office to determine value and used an average value per acre by dividing the average sales price by the average lot size. That average is \$12,267 per acre. My lot size of 1.38 acres gives a value, using this method, of \$16,928 and ultimately a value of \$15,235 after applying the 90 percent figure used in the assessor's office methodology. Using an average sales price figure appears to be a fair way to calculate the value, since it is based on actual sales of many properties that may or may not be totally comparable to my property. An average calculation may be more adequate for that reason alone.

Fourth, I scanned a Summer 1998 listing

advertisement for the Seeley Lake area and found the following comparable listings.

They all appear to be near a creek or spring. The listings are on the Double Arrow Ranch, which I believe is a higher quality area and should command higher values than in the Dogtown area. . .

I have totaled the listings and lot sizes and calculated an average asking price per acre. Please note that all appear to be a single building site and are fairly small acreages. Using this analysis, my lot size of 1.38 acres would be \$11,164. Obviously, since these are listed prices, I would expect actual sales prices of these lots to be somewhat less than the listed price since sellers usually are willing to negotiate to some extent with buyers. . .

Mr. Campbell reiterated his arguments against the disparity and logic of valuing one acre at \$30,000 and remaining acreage at \$800 an acre ("That seems to be a large stretch of the imagination to come to that decision . . . that the first acre is worth \$30,000 and the next acre is worth only \$800.")

Dogtown is an area at Seeley Lake of old cabins, and old mobile homes, and is not a highly desirable location such as Double Arrow Ranch where "all the property is new, there's a golf course next to it, it's very pristine." (Gordon Campbell testimony, State Tax Appeal Board hearing, September 9, 1999). Mr. Campbell is unsure as to whether or not the properties deemed comparable to his for valuation purposes contained Dogtown sales.

To determine an appropriate market value in his view, Mr. Campbell took the averages of all the land sales found in the

DOR sales analysis to obtain a value of \$12,267 per acre. \$12,267 times 1.38 acres (subject property) yields \$16,928. He then applied a ten percent discount ("I'd read that in some of the information) to yield a value of \$15,235. "I'm not saying I know exactly what the value of the land is. I guess, I'm looking at it, from, what's a reasonable approach to come up with a value. . . It's just another way to say, what's a guess at what the value of the property is." He also looked at Summer 1998 real estate listings: Clearwater River Realty. He looked at only properties that had some access or influence by water. He found five properties and averaged the listing price per acre. The properties range in size from two to four acres. He notes that each listed price is less than \$30,000. He came up with an average listed value of \$11,168.

He also notes that 12 of the 19 properties listed on the DOR's CALP are less than \$30,000 and that they range in size from between 1.39 and 2.89 acres. These sales also led him to question the validity of valuing one acre at \$30,000.

Taxpayers' Exhibit 1 consists of a copy of the AB-26 form for property review filed by the taxpayer on September 11, 1998, a copy of a letter outlining the reasons for appeal (which is reproduced in its entirety above), and a copy of five real estate listings from Clearwater River Realty, Inc.:

<u>Phase</u>	<u>Lot</u>	<u>Description</u>	<u>Acres</u>	<u>Price</u>
4	184	Fronts on a mountain creek.	2.74	\$25,000
4	9	Quiet & close to a creek, Broker owned.	2.01	\$18,900
4	47 & 52	Two for the price of one! Small, seasonal stream on property.	4.21	\$19,900
4	195	Heavily treed 2.63 acres. Spring on property.	2.63	\$22,000
7	61	Great building sites! Small creek.	<u>2.6</u>	<u>\$29,000</u>
Totals			14.19	\$114,800
Average listing price per acre:			\$8,090	
			X <u>1.38</u> acres	
Estimate of value			<u>\$11,164</u>	

Taxpayers' Exhibit 2 is a document entitled "Analysis of Land (With Water) in Seeley Lake Area":

<u>MLS#</u>	<u>ADDRESS</u>	<u>FMV</u>	<u>ACRES</u>	<u>COST/ACRE</u>
83161	74 GRANDVIEW SEELEY LAKE	\$25,500	2.54	\$10,039
73464	211 W. WAGON WHEEL SEELEY LAKE	\$26,500	1.55	\$17,097
80356	59 DOUBLE ARROW SEELEY LAKE	\$28,500	2.91	\$ 9,794
73237	60 GRANDVIEW SEELEY LAKE	\$23,500	2.22	\$10,586
50669	108 BOBCAT SEELEY LAKE	\$14,400	2.37	\$ 6,076
83146	150 WEST WAGON WHEEL SEELEY LAKE	\$18,000	1.42	\$12,676
71966	203 WAGON WHEEL SEELEY LAKE	\$18,000	1.37	\$13,139
82080	200 WEST PEACEMAKER SEELEY LAKE	\$19,000	1.34	\$14,179

90438	84 RAINBOW SEELEY LAKE	\$21,000	1.71	\$12,281
		<hr/>		
	TOTALS	\$194,400	17.43	
	AVERAGE FMV/ACRE			\$11,153
	SUBJECT PROPERTY			<u>1.38</u>
	ESTIMATE OF VALUE			<u><u>\$15,391</u></u>

This exhibit also contains several pages of detailed information from MLS concerning the above properties. Mr. Campbell testified that each of the above sales occurred sometime during 1998 and 1999 and concerned unimproved land only.

Mr. Campbell testified that he undertook the above exercises in an attempt to determine what he considered a reasonable fair market value for the subject property. He stated that an amount within the range of \$11,164 and \$15,391 might be a reasonable requested value.

In response to questioning by the DOR, Mr. Campbell testified that the use of the subject property is recreational (fishing, boating, etc.)

DEPARTMENT OF REVENUE CONTENTIONS

Mr. Fairbanks testified the taxpayers' most recent annual lease amount, prior to 1998, was \$325 based upon an appraised value of approximately \$9,300. The lease term is fifteen years, renewable every five years. Within that five year time period, the lease amount remains static. During that time

period, the DOR provides the DNRC a revised level of assessment for all lands leased by the DNRC.

DOR Exhibit A is a document entitled "Response to your challenge of DNRC lease value." Mr. Fairbanks testified that this document was prepared in response to Mr. Campbell's request for property review via the AB-26 form which he filed in September of 1998:

I have provided the Department of Natural Resource and Conservation (DNRC) valuations for 1998 and 1999 lease renewals. These appraisals are consistent with valuations provided last year to all of us who own property subject to property tax. That is, sales of vacant lots up to January, 1996 were used in determining lot valuations. Since your lot was not subject to renewal last year, the updated valuation applies to 1999. Previous lease site appraisals were based on January, 1992 sales.

For next year, your Dog Town Lot 2 lease fee will be based on \$27,274, representing a 10 percent discount of the standard \$30,304 acreage based value appraisal. While your lot is considered to possess superior short attributes, a discount is applied addressing the less than desirable locational characteristics you referenced in our Property Review Form. Area sales used in valuing your lot are all river fronting. Time adjusted prices indicate little value placed on residual acreage. In other words, purchasers paid little more for increased size. The premium was instead placed on the proximity to rivers and streams. (non-river fronting recreational lot sales indicated additional acre values from \$2100 to \$4000.)

I reviewed your detail of properties listed

for sale in Double Arrow. Understand that the regression analysis applied the sales I provided you are not per acreages. Typically, larger parcels sell for less per acre when compared to small tracts like yours. You are correct that no Dog Town lots have been sold by DNRC.

Following study of your thoughtful comments, I am unable to reduce your lot value further. . .

DOR Exhibit B is a copy of a portion of an appraisal report entitled "An appraisal report for the Department of Natural Resources and Conservation, State of Montana, Cabin Site Leases in Missoula County." This document provides some historical background as to how the DOR became involved in valuation of DNRC-held lands and the DOR rationale and methodology behind its appraisal:

In 1983, Montana law provided that cabin site licenses and leases be determined at 5% of the current market value of the property.

Reappraisal of all renewing cabin site leases by the Department of Natural Resources and Conservation (DNRC) resulted in substantial increases. Resultant fee increases were met with valuation challenges from lessees difficult to mitigate.

In 1989, 77-1-208, MCA, was amended requiring the Department of Revenue (DOR) to appraise the cabin sites in the course of reappraising property subject to taxation. This change made available the property appeal processes necessary to resolve valuation disputes. Additional, the fee was changed to 3.5% of value (70% of the original 5% to address leasehold

value).

In the summer of 1989, county appraisal offices (DOR) supplied DNRC with values for cabin sites consistent with ad valorem tax values based on 1982 market sales. **In 1993**, DOR supplied state lease values were based on January 1992 market indications.

For 1998, DNRC is provided values based on current market influences consistent with a recently completed statewide reappraisal. While ad valorem tax appraisals affected by Senate Bill 195 were "phased-in", DNRC state lease values were affected in pertinent part by 77-1-208 MCA: *The value may be increased or decreased as a result of the statewide periodic revaluation of property pursuant to 15-7-111 without any adjustment as a result of phasing in values.*

Market sales of lake properties increasing dramatically in the past few years have consequently influenced cabin site values for current renewals. . .

. . . The purpose of the appraisal is to estimate the current MARKET VALUE of the subject DNRC cabin site leases as of January 1, 1996. DOR procedures for the valuation of DNRC leases provide in pertinent part that The annual fee for the DNRC cabin site leases is based on the full market value as determined by the DOR (77-1-208, MCA). The valuation of tract land and other parcels in the area where the lease is located should serve as the basis for valuation of the cabin site acreage.

To this end, the property rights appraised are here considered in fee simple interest, assuming no indebtedness or incumbrances against the property. . .

. . . Fundamental to the concept of value is the theory of highest, best and most profitable use. Defined as the use that, at the time of the appraisal, is the most

profitable, legal use. For purposes set forth in this report, the Highest and Best Use is considered to be the existing lease arrangements from the perspective of DNRC.

. . . The Computer Assisted Land Pricing (CALP) system is based on the principle that it is possible to arrive at a reasonable and satisfactory estimate of land value through the application of various incremental adjustments and influence factors to a BASE PRICE paid for a unit of land. The unit of land may be a standard lot size in front feet, or in acres. Once the BASE SIZE and BASE VALUE is determined, the PRIMARY and RESIDENTIAL VALUES are assigned. Parcels that are smaller or larger than the BASE are adjusted from the BASE VALUE by the residual.

Example:	Base size	=	1 Acre
or	100FF		
	Base/primary value	=	\$20,000
or	\$300		
	Residual value	=	\$ 7,500
or	\$155		

1.5 acre Lot, 1 Acre @ \$20,000 + .5 acre @ \$7500/ac = \$23,750
 .85 acre Lot, 1 Acre @ \$20,000 - .15 acre @ \$7500/ac = \$18,875
 115' by 200' Lot, 100FF @ \$300 + 15FF @ \$155 = \$32,325
 85' by 200' Lot, 100FF @ \$300 - 15FF @ \$155 = \$27,675

. . . DOG TOWN

Located in the NW1/4 of section 16, T16N, R15W, the so-called DOG TOWN residential development is located at the intersection of the Clearwater River and Riverview drive near the town of Seeley Lake. These cabin sites are developed with modest homes providing year-round use. Sixty-five lots exist in the development. Lots 1 through 22, and 33 through 37 enjoy access to the Clearwater River below the Riverview Drive Bridge, offering no boat access to Seeley Lake.

Area sales of parcels with river exposure provide valuation at \$30,000 for the first (primary) acre, and \$800 for addition (sic) acres. Adjustments to the base valuation are made for lots developed

with less than useful access to the river. Interior lots are subject to CALP pricing schedules also developed from market sales at \$18,300 for 1 Acre BASE SIZE, and for parcels smaller or larger than one acre, \$2200 per acre adjustments are made.

EXAMPLES:

River backing 1.38 acre Lot 22

$\$30,000 + \$304 (.38 \text{ Ac @ } \$800) \times 90\% \text{ grade/access factor} = \$27,274$

Interior 1.38 acre Lot 23,

$\$18,300 + \$836 (.38 \text{ Ac @ } \$2200) = \$19,136$

Interior .91 acre Lot 45,

$\$18,300 - \$198 (.09 \text{ Ac @ } \$2200) = \$18,102$

The subject property "is one of the better lots on the river", according to Mr. Fairbanks.

Mr. Fairbanks produced a spreadsheet entitled "DNRC Leases Subject to DOR Valuation in Missoula County." (DOR Exhibit B, page 6). In keeping with DOR testimony and evidence, this document shows that, for Dogtown lots, the first acre is valued at \$30,000, if it enjoys river frontage, with a residual value of \$800 per acre. Interior lots without direct river influence are valued at \$18,300 for the first acre with a residual value of \$2,200 per acre. This document notes that the DOR appraiser visiting the subject lot found it to be of "level terrain; dry ground to river; 6'+/- elevation" (from the river).

DOR Exhibit B (page 7) is a document entitled "Land Value Modeling" for Neighborhood 24C (Seeley Lake/Double Arrow). This is a regression analysis prepared by Mr. Fairbanks. He testified that he built the Computer Assisted Land Pricing tables to allow

appraisers in Missoula County, as they appraised all of the improvements, to scrutinize the land value in a consistent and equitable manner.

Mr. Fairbanks stated that, when he was appraising land in the Seeley Lake/Swan Valley area, he tried to identify the basic, typical lot. He testified that all of the sales referenced on the "Land Value Modeling" document for the Seeley Lake/Double Arrow lots are located on a "substantial river or creek." Mr. Fairbanks discounted for steep topography, based upon sales data for the typical lot, and augmented for river-fronting properties. These sales occurred between June of 1992 and September of 1995. These sales were time-adjusted to arrive at a valid indicator of market value as of the DOR general assessment date for the current appraisal cycle: January 1, 1996. The DOR assumed a monthly rate of change between the actual sale date and the general assessment date of .26 percent.

Regarding the taxpayers' concern that the ratio of the assessed value of the first acre to that of the residual acreage seem excessive (37½ to one), Mr. Fairbanks responded that the sales data seemed to indicate that "size didn't matter much. . . people are paying right around thirty grand to be on the river, regardless of size." Mr. Fairbanks acknowledged that very few examples exist within the entire DOR CALP system which have such a small adjusted rate (\$800 per acre) in comparison to the base

rate (\$30,000 per acre.) He again characterized this small adjustment rate as an indication that size doesn't matter much to a potential riverfront property buyer. While unusual, he considers the base and adjustment rates used for the subject property to be valid and credible based upon sales indicators.

According to Mr. Fairbanks, the taxpayers experienced such a dramatic increase because their lease period saw the occurrence of two reappraisal cycles (1989 and 1993). The prior value of \$9,300 was the value assigned by the DOR for the 1989 appraisal cycle. The impact of the 1993 cycle was not experienced because the lease term had not expired. The full effect of three appraisal cycles was experienced in 1998 when the lease came due again.

Mr. Fairbanks also testified that the DNRC cabin site leases are not subject to the phase-in provisions of SB 195 in accordance with Section 77-1-208, MCA.

BOARD DISCUSSION

The Board finds that the sales presented in Taxpayer's Exhibit 2 all have occurred past the general assessment date for the current reappraisal cycle of January 1, 1996. Further, the Board is not convinced that these sales are of river-fronting properties or substantial river-influence properties. The taxpayers acknowledged at the hearing before this Board that their requested value is "probably on the lower end of the

scale."

The DOR's statutory mission, pursuant to Section 15-8-111, MCA, is to arrive at market value, or what a property would sell for on the open market. The eight sales referenced on page seven of DOR Exhibit B (sale numbers 100 through 107) are located on the Clearwater River Outlet of Seeley Lake, as is the subject. The average size is 1.44 acres, the average adjusted sale price is \$32,030, and the average price per acre is \$22,243 (\$32,030 divided by 1.44 acres). The subject property has been appraised at \$30,304 and discounted to \$27,274. The subject property is 1.38 acres. The subject is valued at \$ 19,764 per acre. The Board is satisfied that the DOR has arrived at a valid indicator of market value.

On the issue of the fact that DNRC leaseholders do not enjoy the same "bundle of rights" as fee simple owners, the DOR testimony was that it made no adjustments in recognition of that disadvantage. The 1989 legislative session did, however, by reducing the percentage of market value due from leaseholders from five percent to three and a half, or a market value reduction of 30 percent.

On the issue of the fact that DNRC cabin site leaseholders do not receive the benefit of the phase-in provisions of SB 195, the Board notes that this is an unfortunate circumstance. The taxpayers, and similar situated lease holders, are subject to the

ORDER

IT IS HEREBY ORDERED by the State Tax Appeal Board that the assessed value of \$27,274, as determined by the Department of Revenue pursuant to Section 77-1-208 (1), MCA, shall remain as the derivation for the subject cabin site lease fee.

DATED this 28th day of September, 1999.

BY ORDER OF THE
STATE TAX APPEAL BOARD

GREGORY A. THORNQUIST, Chairman

(S E A L)

JAN BROWN, Member

JEREANN NELSON, Member

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 28th day of September, 1999, 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:

Gordon Campbell
P.O. Box 630
Milltown, Montana 59851

Office of Legal Affairs
Department of Revenue
Mitchell Building
Helena, Montana 59620

Appraisal/Assessment Office
Missoula County Courthouse
Missoula, Montana 59802

DONNA EUBANK
Paralegal