

BEFORE THE STATE TAX APPEAL BOARD
OF THE STATE OF MONTANA

Donald D. Bielenberg,)	
)	DOCKET NO.: PT-1997-120
Appellant,)	
)	
-vs-)	
)	
THE DEPARTMENT OF REVENUE)	FINDINGS OF FACT,
OF THE STATE OF MONTANA,)	CONCLUSIONS OF LAW,
)	ORDER and OPPORTUNITY
Respondent.)	<u>FOR JUDICIAL REVIEW</u>

The above-entitled appeal was heard on the 5th day of November, 1998, in the City of Polson, Montana, in accordance with an order of the State Tax Appeal Board of the State of Montana (the Board). The notice of the hearing was duly given as required by law.

The taxpayer, Donald Bielenberg, presented testimony in support of the appeal. The Department of Revenue (DOR), represented by Jackie Ladner, appraisal supervisor, presented testimony in opposition to the appeal. Testimony was presented, exhibits were received and 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:

FINDINGS OF FACT

1. Due, proper and sufficient notice was given of this matter, the hearing hereon, and of the time and place of the

hearing. All parties were afforded opportunity to present evidence, oral and documentary.

2. The taxpayer is the owner of the property which is the subject of this appeal and which is described as follows:

Lot 1, Bielenberg landing Subdivision,
Swan Lake, Lake County, State of Montana,
and the improvements located thereon.
(assessor code - 15807).

3. For the 1997 tax year, the DOR appraised the subject property at a value of \$119,889 for the land and \$890 for the improvements.

4. The taxpayer appealed to the Lake County Tax Appeal Board on November 21, 1997 requesting a reduction in value to \$51,773 for the land and \$290 for the improvements, stating:

Lot 1 of BIELENBERG LANDING SUBDIVISION IS NOT COMPARABLE TO OTHER LOTS OF THE SUBDIVISION. It has an Easement on the Southwest portion granted to Lot 2. There is a rock barrier along the lakeshore. This lot would not warrant construction for a lake-shore home. Re: Buildings: A block pump house (8' x 7'9") built 32 years ago. The 1996 value 290 and the Reappraisal of 890 a three fold increase. Does not reflect market value.

5. The county board denied the taxpayer's appeal on the land and adjusted the value of the improvement to \$290 on March 2, 1998, stating:

He himself sold a 100' lot without lake access for (lot #15) \$80,000 in 1993 and an adjoining lot (#17) without lake access 310' for \$195,000. This 118 foot lot has some usable lake frontage. The Board feels the value on block building was not proved to have increased.

6. The taxpayer appealed that decision to this Board on March 25 1998, with an attached page to the appeal form that

stated the reasons for appeal.

TAXPAYER'S CONTENTIONS

The taxpayer's requested value of \$51,773 is the DOR's established market value from the previous appraisal cycle.

Mr. Bielenberg contends the subject lot is not comparable to other lots within the Bielenberg Landing Subdivision; therefore, it should be valued on its own merits. The lots that the DOR has used to value the subject are not comparable.

There is an easement along the southwest boundary of the subject property that allows access to the adjacent property.

Based on the present use of the subject lot as a parking area for the marina, which is located on the adjacent property, the subject is not suitable for a lakeshore residence. If the subject lot were to be developed with a residence, the marina would be adversely affected. It is the taxpayers opinion that the subject lot is a vital part of the operation of the marina.

DOR'S CONTENTIONS

The county board's decision referenced lots #15 and #17 which are actually lots A and B. The numbers 15 and 17 are used by the DOR's geo code system for identification purposes.

The DOR has applied a 35% reduction to the market value of the subject lot. The 35% reduction was applied based on the use of property as a parking area. This adjustment is identified on the property record card (exhibit E) as having

"restrictions or nonconforming use". The subject lot is the only lot within the subdivision that has been granted the adjustment. This reduction is based on use. This adjustment was established during the previous appraisal cycle and adhered to in the current cycle.

The property record card (exhibit E), "land data & computations" in summary illustrates the following:

Front foot (4); Width - 118 feet; Depth - 1 foot;
 Unit Price - \$1,332.88; Influence factor - 65%
 Land value - \$102,232
 Primary site (1); .49 acres; Influence factor - 65%
 Land value - \$17,657
 Total land value - \$119,889

Page 5 of exhibit C is a copy of the DOR's computer assisted land pricing (CALP) for neighborhood 301-3LF, Swan Lake. This exhibit is a compilation of twenty vacant land sales used to establish land values for properties in neighborhood 301-3LF. In summary this exhibit illustrates the following:

<u>CALP MODEL</u>		
Base	100	1
Base	\$1,400	\$29,000
Adj. R	\$960	\$3,600

BOARD'S DISCUSSION

Reconstructing the DOR's land valuation for the subject is accomplished as follows:

100 front feet - base size
 x \$1,400 base rate per front foot
\$140,000 value of the first 100 feet

18 front feet - additional frontage

x \$960 per front foot of additional frontage
\$17,280

\$157,280 total value
x 65% adjustment factor
\$102,232

1.0 acre - base size
- .49 acres - subject lot size
.51 acres
x \$3,600 acre adjustment rate
\$1,836 amount of adjustment for size difference

\$29,000 base rate per acre
- \$1,836 amount of adjustment for size difference
\$27,164 adjusted base size
x 65% adjustment factor
\$17,656 additional land value

\$119,889 total land value

The front foot valuation method the DOR in Lake County has determined to adopt is far different than what the Board has been presented as land valuation methods in other counties. In *PT-1997-26, Glen A Wohl v. DOR*, a Missoula County property located on Seeley Lake, the DOR established a base size 100 front feet, a standard depth of 200 feet, a base rate of \$1,050, and an adjustment rate of \$300.

The "*Montana Appraisal Manual*", page A32-9, Lot Depth Valuation Factors in summary states:

These tables are to be used as guides for calculating values for lots that are either shorter or longer than the standard lot depth in the area...

...Select the actual depth of the lot and follow across to the proper standard lot depth for the area being appraised. The figure encountered is the percentage factor to be applied to the front foot value of the lot. The modified front foot value is then multiplied by the width of the lot. (emphasis added)

...The front foot depth factor is equal to the square root of the ratio of the actual depth to the standard depth. (emphasis added)

$$\sqrt{\text{actual depth/standard depth}}$$

For example: a 90 foot deep lot where the standard depth is 100 feet gives a depth factor:

$$\sqrt{90/100} = \sqrt{0.90} = 95\%$$

Based on Lake County's method of using one foot as the standard depth, the depth factor calculation for the subject property renders the following depth factor adjustment, assuming a rectangular lot:

$$\sqrt{181/1} = \sqrt{181} = 13.5\%$$

Assuming the standard depth for the model was 200 feet, the calculation would render the following:

$$\sqrt{181/200} = \sqrt{.905} = 95\%$$

The front foot land valuation method recognizing the Montana Appraisal Manual renders the following:

	<u>DOR - Lake County</u>	<u>Board's Calculation</u>
Front Foot Value	\$1,400 FF	\$1,400 FF
Depth factor	x 13.5%	x 95%
Adjusted FF Indication	<u>\$189 FF</u>	<u>\$1,330 FF</u>
Lot Front Feet	x 118 FF	x 118 FF
Lot Value	<u>\$22,302</u>	<u>\$156,940</u>
Adjustment Factor	x 65%	x 65%
Adjusted Lot Value	\$14,496	\$102,011

1 $\sqrt{\quad}$ = square root

The DOR's land value for the subject property is \$102,232 for the first one foot of the 118 front feet. The additional land area contributes an additional \$17,657 in value.

The Board recognizes that lots vary in shape, size, topography, etc., and the property record allows for an adjustment by means of the various influence codes and percentage adjustments.

The taxpayer contends the DOR has used sales that are non-comparable to the subject. Appraisal methodology provides that the most comparable sales are selected and the appropriate adjustments are applied to make the sales resemble the property being appraised. It is the opinion of the Board that the DOR has attempted this by applying a 35% adjustment.

It is the Board's opinion the DOR's additional \$17,657 in market value is not substantiated.

CONCLUSIONS OF LAW

1. The State Tax Appeal Board has jurisdiction over this matter. **§15-2-301 MCA.**

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

3. **15-2-301, MCA, Appeal of county tax appeal board decisions.** (4) In connection with any appeal under this section, the state board is not bound by common law and statutory rules of evidence or rules of discovery and may affirm, reverse, or modify

any decision.

4. ARM 42.18.122 Revaluation Manuals, (2) For the reappraisal cycle ending December 31, 2009 Montana Appraisal Manual will be used for valuing residential and agricultural/forest land real property.

5. The appeal of the taxpayer is hereby granted in part and denied in part and decision of the Lake County Tax Appeal Board is modified.

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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 Assessor of that county at the 1997 tax year value of \$102,232 for the land. The appeal of the taxpayer is therefore granted in part and denied in part and the decision of the Lake County Tax Appeal Board is modified.

Dated this 31st of December, 1998.

BY ORDER OF THE
STATE TAX APPEAL BOARD

(S E A L)

GREGORY A. THORNQUIST, Member

LINDA L. VAUGHEY, Member

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Chairman McKelvey dissents in PT-1997-120

I generally concur with my colleague's decision as written. However, I do not agree with the majority opinion that the indication of value determined by the Department of Revenue is in error.

Like the majority I am concerned with the variation of the Computer Assisted Land Pricing (CALP) method that is presented in this appeal. This Board has conducted hearings in other counties in the same region as Lake County and the method for determining value is more uniform than the method used here, one that values only the one foot depth by the length of the waterfront footage. It is a method that when worked in reverse by dividing the value by the front feet, or when the resultant front foot value is printed on the taxpayer property record card, indicates a wide variation from one property to another. Granted it is explainable that, in reality, each property starts with the same value per front foot, but the appearance of inequity alone has been the subject of more than one appeal in Lake County. It would seem that in the interest of uniformity those areas where numerous properties of this type, where real estate markets exist in great numbers for water influenced property, the same method for determining value would be used from county to county. The front foot value method is the recognized method for determining value in this area. Real estate listings commonly refer to the number of water front feet for a parcel. They do however present the overall value indication based on that amount of water front exposure. It is natural to

think in terms of the dollars per front feet and that is the common denominator. There is value to the overall parcel size, but it is reflected in the front foot value. When calculated on that basis the required adjustments for size, depth, or physical characteristics and influence are more easily understood.

The majority is of the opinion that the calculation for the total parcel size as a secondary addition to the front foot value has valued that portion twice, hence an overstatement of the lot value. I agree that there is a potential for that to happen although the record contains no evidence or testimony that it did occur in this case. It is also troubling that there appears to be recognition that the influence of the water is only impacting the frontage when it is undoubtedly having an impact on the entire lot. To bring sales of property not associated with water influence in to value the entire parcel size may be detrimental to this method as well. If those sales are located off of a water influenced location then the comparability issue is raised. In this case that is of course to the taxpayer advantage.

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With my reservations for the method as used it is my opinion that there is no substantial, credible evidence to indicate that the value as determined by the DOR is not the fair market value for the subject property and I would affirm the decision of

the Lake County Tax Appeal Board.

Dated this 7th day of January, 1999

PATRICK E. MCKELVEY, Chairman

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.