

BEFORE THE STATE TAX APPEAL BOARD  
OF THE STATE OF MONTANA

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ROBERT D. & KAY H.	)	
COLCLAZIER TRUST,	)	
	)	DOCKET NO.: PT-2003-96
Appellant,	)	
	)	
-vs-	)	
	)	
THE DEPARTMENT OF REVENUE	)	FACTUAL BACKGROUND,
OF THE STATE OF MONTANA,	)	CONCLUSIONS OF LAW,
	)	ORDER and OPPORTUNITY
Respondent.	)	<u>FOR JUDICIAL REVIEW</u>

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The above-entitled appeal was heard on July 27, 2004 in the City of Helena, 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 Appellants, Robert and Kay Colclazier, initiated this appeal from a decision of the Lewis and Clark County Tax Appeal Board. Robert Colclazier represented the Appellants. Tracie Grimm, appraiser, and Rocky Haralson, Area Manager represented Respondent Department of Revenue. Testimony was presented and exhibits were received from both parties. The Board allowed the record to remain open for a period of time for the purpose of receiving post-hearing submissions from both parties. Having received the post-hearing submissions in a timely fashion, the Board then took the appeal under advisement. The Board heard an

appeal of an adjacent property owner, wherein the argument was the same with respect to the land being penalized for size. This Board has incorporated the record of that appeal and the decision is integrated and attached to this decision (*Hennessey v. Montana Department of Revenue, DOCKET NO.: PT-2003-97*). Having fully considered the testimony, exhibits and all things and matters presented, the Board finds and concludes that the appeal of the taxpayers is denied and the decision of the Lewis and Clark County Tax Appeal Board is affirmed.

#### **STATEMENT OF THE ISSUE**

The theme of the taxpayers' argument is that small landowners are penalized under a taxation scheme that assesses the first acre at approximately \$94,000 and remaining acreage at approximately \$900 per acre. Based upon the DOR's appraisal of other parcels of land, the taxpayers feel a land value of \$48,000 would be more equitable. In addition, the taxpayers are requesting the prior cycle value of \$35,811 for the improvements, which they contend are not appropriate for year-round living.

#### **FACTUAL BACKGROUND**

1. The taxpayers are the owners of the subject land which is described as follows:

**Lot 17, Prickly Pear Creek, Deer Park Summer Cabins, comprised of .96 acres, located in Section 8, Township 11 North, Range 2 West, with a street address of 3935 Deer Park Drive, County of Lewis and Clark, State of Montana, and the improvements located thereon. (Assessor ID: 0000010419).**

2. For tax year 2003, the DOR appraised the subject land at a value of \$94,739 and \$51,661 for the improvements.
3. The taxpayers filed an AB26 form for property review with the DOR on August 15, 2003 (Taxpayers' Exhibit 2 and DOR Exhibit I), basing the request for review on the condition of the cabin, amenities of the lake and the land value. Upon review, the DOR determined that no adjustment would be made to either the land or the improvement value.
4. The taxpayers appealed that decision to the Lewis and Clark County Tax Appeal Board on August 15, 2003 requesting a land value of \$27,700 and an improvement value of \$35,811.
5. In its January 27, 2004 decision, the county board denied the appeal, stating:

**D.O.R. values reflect market value.**

6. The taxpayers then appealed that decision to this Board on February 20, 2004, stating:

**Evaluation system flawed-wasn't done right-took easy way out and pulled number out of nowhere! Basis point used for small one acre tract makes owner liable for lion's share of tax increase vs large 9 acre tract (500 ft. water front) tax load 95,000 + 8 acres (2) 72,000 - total \$167,000.**

7. At the hearing before this Board, Mr. Colclazier amended his requested land value to \$48,000. His requested improvement value remains at the value requested before the county board, \$35,811.

#### **TAXPAYERS' CONTENTIONS**

The subject improvements are not a year-round residence. The

water lines in this area are on rock and they're buried about six to eight inches deep and there's no way to keep them from freezing in the winter. The well is drained in winter. The water is non-potable. Less than one-half acre of the lot is usable. There is no boat launch capability. There is no garbage or mail service. There's a high water problem. Another property owner owns property running right across the front of his lot. Four or five feet of the lot have washed away in the 17 years that he's owned the property.

Taxpayers' Exhibits 1 and 2 are plat maps depicting the irregular shape of the subject lot, including a piece of the lot that juts out into the water (Prickly Pear Creek arm of Hauser Lake), a right-of-way road easement across the portion of the lot which does not have water frontage, and the location and ownership of lots in Deer Park Subdivision. Exhibit 3 is a copy of photographs of the subject improvements and the dock.

Exhibit 4 is an information sheet pertinent to the subject property's appraisal, obtained by the taxpayers from a DOR website containing appraisal information available to the public. This exhibit contains Mr. Colclazier's handwritten notes regarding corrections he feels are appropriate to the DOR records on the heating system, plumbing fixtures, the bathroom, and the siding on an 8' by 16' picnic shelter.

Exhibit 5 is a copy of information that was presented at the hearing before the Lewis and Clark County Tax Appeal Board. The

theme of the argument before the county board was that small landowners are penalized under a taxation scheme that assesses the first acre at approximately \$94,000 and remaining acreage at approximately \$900 per acre. To illustrate the inequity, the average assessed per acre values of five properties located in the subject neighborhood were presented. Depending on the size of the parcel, these properties ranged from \$11,751.76 to \$51,420.88 per acre.

Exhibit 6 is a document containing the appraisal information pertinent to a 2.830-acre parcel of land in the Deer Park Subdivision. The DOR appraised the land at \$55,337.

Exhibit 7 is a document containing the appraisal information pertinent to a 6.820 acre parcel of land located "straight across from Lakeside where you have the marina and so you have paved roads to get to most of it", valued by the DOR at \$44,828.

Exhibit 8 is a document containing the appraisal information pertinent to a 2.240 acre parcel of land "that comes directly off of York Road, sits side by side with the marina", valued by the DOR at \$42,996. The property is zoned as commercial and the house sits right on the water, 200 yards from the Lakeside Marina."

Exhibit 9 is a document containing the appraisal information pertinent to a one-acre parcel of land, valued by the DOR at \$42,500, located in the subject neighborhood.

Exhibit 10 is a document containing the appraisal information pertinent to a 1.010-acre parcel of land, valued by the DOR at

\$42,504, on Eagle Bay Drive, accessible off York Road.

Exhibit 11 is a document containing the appraisal information pertinent to a 1.060-acre parcel of land, valued by the DOR at \$64,282, on West Shore Drive on Canyon Ferry Lake.

Exhibit 12 is a document containing the appraisal information pertinent to a 7.2-acre parcel of land on Canyon Ferry Lake.

Based upon the above appraisal information, Mr. Colclazier estimated that the subject land should be appraised at approximately \$48,000.

For the improvements, Mr. Colclazier is requesting the prior cycle value of \$35,811.

#### **DOR CONTENTIONS**

Regarding the subject cabin, the DOR has determined a quality grade of four (below average) and a CDU (condition, desirability and utility) of very good due to the lake influence. A copy of the DOR's property record card (Exhibit A) was submitted to show the property's physical characteristics assigned and delineated.

The subject improvements were appraised using the market sales approach.

DOR Exhibit C is a map showing the location of the subject property in relation to the comparable properties whose sales price helped determine the subject appraisal. DOR Exhibit D is a map showing the land and improvement values, and the locations of selected comparable and adjoining properties within the subject subdivision. A 223% influence factor for this neighborhood was

determined through sales information reviewed by the DOR (DOR Exhibit F). Influence factors recognize the characteristics of individual parcels, such as location within a flood plain, lake frontage, view, limited access, size and topography. Influence factors are established from analysis of vacant or abstracted land sales within the same neighborhood. After establishing the base values for a neighborhood, the DOR can further refine the individual parcel values by applying this influence factor.

DOR Exhibit E is a two-page document comparing the subject land appraisal with the sales prices and appraised values of eight land parcels. The sales occurred between October of 1998 and January of 2001. The parcels ranged in size between 0.37 and 6.7 acres and sold for a range between \$75,838 and \$159,000.

DOR Exhibit G is a copy of photographs of the roads serving the subject property. These appear to be level, graveled roads.

DOR Exhibit J is a copy of photographs of the subject improvements, depicting the lake views and access enjoyed by the property.

The DOR's position is that an adequate number of sales occurred to sufficiently demonstrate the market value difference concerning lake front properties and those without that influence.

#### **BOARD DISCUSSION**

The Board heard an appeal on September 8, 2004, (*Hennessey v. Montana Department of Revenue, DOCKET NO.: PT-2003-97*), where the

argument on land assessment mirrored the argument presented by this taxpayer. The Board, in that appeal, requested additional sales information from the DOR, along with a map depicting the location of various sales data presented. The following is the Board discussion from that decision:

The Montana Supreme Court held in State ex rel. Schoonover v. Stewart, 89 Mont. 257 (1931), "And in no proceeding is one to be heard who complains of a valuation which, however erroneous it may be, charges him with only a just proportion of the tax. If his own assessment is not out of proportion, as compared with valuations generally on the same roll, it is immaterial that some one neighbor is assessed too little; and another too much."

The DOR's Computer Assisted Land Pricing (CALP) model that was developed to establish land values for property located in "Neighborhood 441-3", identified eight vacant parcels:

DOR CALP					
Sale #	Sale Date	Sale Price	Lot Size	Price Per Acre	Price Per Square Foot
1	Oct-98	\$106,116	0.595	\$178,346	\$4.09
2	Nov-99	\$116,352	0.532	\$218,707	\$5.02
3	Jun-99	\$78,220	0.523	\$149,560	\$3.43
4	Oct-04	\$93,870	1.1	\$85,336	\$1.96
5	Jun-99	\$75,838	0.37	\$204,968	\$4.71
6	Oct-00	\$93,241	0.66	\$141,274	\$3.24
7	Nov-00	\$103,000	6.7	\$15,373	\$0.35
8	Aug-00	\$85,000	20.05	\$4,239	\$0.10

The DOR testified that land values for property that have water frontage are valued at \$42,500 for the first acre of land, and each additional acre is valued at \$400. That value indication

is then increased by 223% to reflect the influence of water frontage. There is nothing in the record that supports a 223% influence factor for direct water access. Sales #1, #2, #3, #6 and #7 all are water-fronting property so that characteristic has been taken into account. Sales #4 and #5 are located just off the water and sale #8 is not identified on the map at all. In addition, sale #8 is a property comprised of twenty acres and begs the question of comparability. The Board is unable to conclude how the DOR established a base acre rate, a residual acre rate, and an influence factor adjustment based on the CALP model.

The Board requested from the DOR any and all sales data, whether vacant or improved, regardless of sales date, which would provide any assistance in rendering an opinion of value. The DOR supplemented the record with fourteen additional sales, of which three were vacant land sales, as illustrated in the table below:

Sale #	Sale Date	Number of Acres	Sales Price	DOR Imp. Value	Abstracted Land Value
1	08/16/2004	1.01	\$460,000	\$217,996	\$242,004
2	01/31/2001	5.329	\$165,000	\$52,643	\$112,357
3	06/29/2001	0.284	\$240,000	\$121,363	\$118,637
4	06/25/2002	4.58	\$159,500	vacant land	vacant land
5	06/14/2002	2.83	\$ 55,000	vacant land	vacant land
6	10/24/2003	1.577	\$400,000	170,110	\$229,890
7	04/23/2003	9.37	\$547,500	\$194,759	\$352,741
8	06/09/2003	1.07	\$289,000	\$144,363	\$144,637
9	06/13/2003	0.92	\$265,000	\$126,396	\$138,604
10	05/17/2003	0.499	\$284,000	\$117,971	\$166,029
11	07/02/2002	1.11	\$465,000	\$263,850	\$201,150
12	10/22/2001	1.1	\$250,000	\$130,236	\$119,764
13	10/02/2002	4.39	\$150,000	vacant land	vacant land
14	07/03/2003	2.9	\$340,000	\$148,630	\$191,370

The Board notes that when establishing land value, the best indicator is a vacant property which is comparable to the property

being appraised in all aspects, i.e. location, size, topography, etc. When insufficient sales data is available, it may be necessary to consider improved sales and extract the value for the improvements in order to arrive at an indication for the land component. Sales #6 and #7 are in the immediate vicinity of the subject property and are improved properties. Based on the sales prices and DOR's market value determination for the improvements, the sale transaction and the DOR's reappraisal denotes the following with respect to indications of land value:

Sale #	Sale Date	Sale Amount	Improvement Value (DOR)	Land Value	2003 DOR Market Value		
					Land	Improvements	Total
6	10/24/03	\$400,000	\$170,110	<b>\$229,890</b>	<b>\$95,290</b>	\$170,110	\$265,400
7	4/22/03	\$547,500	\$194,759	<b>\$352,741</b>	<b>\$102,241</b>	\$194,759	\$297,000

The Board notes that these sales did occur outside the time frame that the DOR was establishing values for the current appraisal cycle. It was also testified that values have been increasing. Although values may have been increasing for property with water frontage, there is nothing in the record to suggest appreciation of 141% and 245% from the date of value to the time the sale occurred. This large disparity does call into question the accuracy of the land values as determined by the DOR.

The Board questioned the DOR with respect to the method that is utilized in Lewis and Clark County for determining land value for property with water frontage. The Board notes that, in other counties, the DOR values property with water influence based upon the amount of water frontage or price per front foot. Adjustments

are applied for lot depth and other considerations such as topography, utilities, access, etc. In fact, the DOR's own property record card provides for various adjustments. Based upon what it has heard in other appeals statewide, these types of property are greatly influenced by the amount of water frontage. This Board analyzed the DOR sales based upon a price per acre and a price per square foot and could not conclude any comprehensible support for a value of \$94,793 for the subject lot. In fact, based upon the sales data presented, the DOR's value could be low. Without lot dimensions, the Board could not analyze the sales on a price per front foot basis.

One of the issues raised by the taxpayer is that of equity. The taxpayer illustrated that comparably situated properties are being valued disproportionately based upon size. The following table compares the subject with three properties within the subject subdivision. Based upon the DOR's map, these properties have what appears to be three to four times the amount of water frontage as the subject:

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	Subject	TP Comp	DOR Land Value (sale #6)	DOR Land Value (sale #7)
1st Acre (\$)	\$42,500	\$42,500	\$42,500	\$42,500
Acre	1	1	1	1
1st Acre Value	\$42,500	\$42,500	\$42,500	\$42,500
Residual Acreage \$	\$400	\$400	\$400	\$400
Residual Acreage	0.019	7.645	0.57	8.37
Residual Acreage Value	\$8	\$3,058	\$228	\$3,348
Unadjusted Value	\$42,508	\$45,558	\$42,728	\$45,848
Influence Adjustment	223%	223%	223%	223%
<b>Adjusted Market Value</b>	<b>\$94,792</b>	<b>\$101,594</b>	<b>\$95,283</b>	<b>\$102,241</b>
# of Acres	1.019	8.645	1.57	9.37
<b>\$/Acre</b>	<b>\$93,024</b>	<b>\$11,752</b>	<b>\$60,690</b>	<b>\$10,912</b>

As illustrated above, proportionately, the smaller lots are valued higher than the larger lots by the DOR. Based upon the sales data presented, the DOR's application of \$42,500 for the first acre, \$400 for each additional acre, and the influence factor of 223% is unsupported. In addition, there is the possibility that the larger properties are not being appraised at market value as defined in **§15-8-111. Assessment -- market value standard -- exceptions.** (1) All taxable property must be assessed at 100% of its market value except as otherwise provided.

Based upon the method the DOR has valued property within this model, it would suggest that a buyer is willing to pay approximately the same for a one acre parcel as they would for a three acre parcel. It is the DOR's opinion that anything over an acre in size contributes very little with respect to value. If

this is actually the case, it needs to be established from what is occurring in the market. The DOR has provided no such documentation to support this. In fact the sales information illustrating the extracted land value suggests that the size of the parcel does impact value:

DOR Extracted Land Value	Sale #6	Sale #7
Sale Price	\$229,890	\$352,741
Size – Acres	1.58	9.37
\$/Acre	\$145,500	\$37,646

The taxpayer is asking this Board to reduce the land value to \$42,500. The taxpayer has not provided this Board any supporting market data to suggest a value of \$42,500. The market data that this Board has been presented for property in the immediate vicinity of the subject supports the DOR's value or the possibility of something greater.

The taxpayer also presented an equity argument that this Board felt compelled to address, but is beyond our jurisdiction. This is a matter of law and when it comes to issues of law, they are reserved for the courts. The value before this Board is the DOR's 2003 market value for the land. This Board rules on matters of fact, and there is no factual market data to suggest anything less than what the DOR has assigned.

The Taxpayer, in the immediate appeal has requested this Board set the value of the improvements at \$35,811. This value was from the previous appraisal cycle that represents a value for 1996. The taxpayer has not provided this Board with any market data that

suggests market values have remained constant. All indications are that real estate values, especially property with water influence, have escalated.

#### CONCLUSIONS OF LAW

1. **§15-2-301, MCA**, The State Tax Appeal Board has jurisdiction over this matter.
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. **§15-2-301 MCA**, Appeal of county tax appeal board decisions, (4) *...The state tax appeal board shall give an administrative rule full effect unless the board finds a rule arbitrary, capricious, or otherwise unlawful.*
5. The subject land and improvements shall be entered on the tax rolls of Lewis and Clark County by the local Department of Revenue office at 2003 tax year values of \$94,739 and \$51,661 respectfully.

**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 Lewis and Clark by the local Department of Revenue office at the land value of \$94,739 and an improvement value of \$51,661 for tax year 2003. The decision of the Lewis and Clark County Tax Appeal Board is affirmed.

Dated this 8th day of December, 2004.

BY ORDER OF THE  
STATE TAX APPEAL BOARD

\_\_\_\_\_  
GREGORY A. THORNQUIST, Chairman

\_\_\_\_\_  
JERE ANN NELSON, Member

\_\_\_\_\_  
JOE R. ROBERTS, 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 December 2004, 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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