

BEFORE THE STATE TAX APPEAL BOARD
OF THE STATE OF MONTANA

JAMES E. & SUSAN K.)	
HENNESSEY,)	
)	DOCKET NO.: PT-2003-97
Appellants,)	
)	
-vs-)	
)	FACTUAL BACKGROUND,
THE DEPARTMENT OF REVENUE)	CONCLUSIONS OF LAW,
OF THE STATE OF MONTANA,)	ORDER and OPPORTUNITY
)	<u>FOR JUDICIAL REVIEW</u>
Respondent.)	

The above-entitled appeal was heard on September 8, 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, James and Susan Hennessey, initiated this appeal from a decision of the Lewis and Clark County Tax Appeal Board. Susan Hennessey 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; and the Board having fully considered the

testimony, exhibits and all things and matters presented to it by the parties, 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 \$93,000 and remaining acreage at approximately \$900 per acre. Based upon the DOR's appraisal of other similar parcels of land, the taxpayers feel a land value of \$42,500 would be more equitable.

FACTUAL BACKGROUND

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

Lot 16, Prickly Pear Creek, Deer Park Summer Cabins, comprised of 1.01 acres, located in Section 8, Township 11 North, Range 2 West, with a street address of 3929 Deer Park Drive, County of Lewis and Clark, State of Montana, and the improvements located thereon. (Geocode: 1996-08-4-01-0500; Assessor ID#: 9751).

2. For tax year 2003, the DOR appraised the subject land at a value of \$94,793.

3. The taxpayers filed an AB26 form for property review with the DOR on August 4, 2003 (DOR Exhibit A), basing the request for review on aspects of the cabin and land erosion issues. Upon review, the DOR determined that an adjustment would be made to the cabin value through a reduction in the quality grade from 4

minus to 3 plus (fair). No adjustment was made to the land value.

4. The taxpayers appealed that decision to the Lewis and Clark County Tax Appeal Board requesting a land value of \$31,840. The improvement value was not in contention.

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 21, 2004, stating:

#1 - Comps are not like or alike my property.

#2 - Basis of one acre is not equitable.

7. At the hearing before this Board, the Hennesseys are requesting a value of \$42,500 for the land and the improvements are not in contention.

TAXPAYERS' CONTENTIONS

The subject improvement is not a year-round residence. The land is serviced by a well and septic, but not by utilities or telephone.

The taxpayers purchased the subject property in 1989. At that time, the property was referenced on the DOR assessment records as consisting of 2.36 acres. They were informed by a DOR representative that the Deer Park area did not have a closed survey; rather, the appraiser had performed hand calculations of these parcels. The DOR required the taxpayers to hire a surveyor,

at their expense, to perform an accurate survey of the property. Upon completion of the professional survey, the taxpayers were to submit it to the court of records. The survey was completed, but no adjustment was made to the total property value.

An equity issue exists in the DOR's treatment of parcels containing twenty or more acres, which receive agricultural classification pursuant to statute, and significantly lower taxes, than parcels such as the subject, which contains only one acre. In some cases, these larger parcels are within 400 feet of the subject property.

The taxpayers dispute the comparability of the properties used by the DOR to determine market value for the subject. Because the subject is one acre in size, water-fronting, with recreational use, the taxpayers compiled a list of sixteen properties with similar amenities and size (Taxpayer's Exhibit 5) whose assessments are lower than the subject. The properties range in size from 0.89 to 2.83 acres and in value from \$7,100 to \$60,643 per acre (the subject property is valued at \$93,026 for its 1.109 acres). According to the records they were able to access, it is their belief that these properties are all water-fronting - four on Hauser Lake near the subject, two on Canyon Ferry Lake and two on the Missouri River near Craig. The taxpayers assert that the Canyon Ferry and Missouri River properties have amenities, such as paved roads, restaurants, etc., that the subject lot does not enjoy. This wide variation in appraised value among what the

taxpayers believe to be comparable properties is the basis for their appeal.

Additionally, the use of a one-acre base size penalizes the owners of smaller lots. The small parcel owners are carrying a larger tax burden than large parcel owners.

In comparison with cost of living and inflation, the magnitude of the increase in appraised value experienced by the subject property is excessive.

At the hearing before this Board, regarding the taxpayers' requested value; Ms. Hennessey stated, "Probably \$42,500 is where it should be." (Taxpayer's Exhibit 5)

Taxpayers' Exhibit 6 is a document prepared by Ms. Hennessey entitled "Inequitable Land Values." The appraised values of eight parcels were presented in contrast to that of the subject. These properties range in size from 2.24 acres to 11.05 acres. All eight lots are water-fronting and within reasonable proximity to the subject. The appraised values range from \$46 per acre for a 7.81 acre parcel on Holter Lake to \$35,923 per acre for 2.56-2.68 acre parcels near Prickly Pear Creek. The subject property is appraised at \$93,026 per acre.

DOR CONTENTIONS

DOR Exhibit C (from the record of *Robert D. and Kay H. Colclazier Trust v. Department of Revenue*, PT-2003-96, a related appeal hearing held on July 27, 2004) 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 (from the record of *Robert D. and Kay H. Colclazier Trust v. Department of Revenue*, PT-2003-96, a related appeal hearing held on July 27, 2004) 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 B) 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. The 223% influence factor was applied in recognition of the waterfront influence evidenced in sales data.

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

DOR Exhibit F also contains copies 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. These sales demonstrate that people are willing to pay more for smaller lots than for larger ones and that water access is a highly desirable asset, which has been demonstrated in the market.

The DOR questioned whether all of the properties referenced in Taxpayers' Exhibit 5 are truly water-fronting and, therefore, truly comparable to the subject. As a post-hearing submission at the request of this Board, the DOR was asked to provide information regarding the location of these properties. The DOR filed this response on September 20, 2004. Of the 16 properties referenced the taxpayers' land comparison values (Taxpayers' Exhibit #5), Ms. Grimm addressed the first eight. She stated that the remaining eight properties were not in the same sub-neighborhood designation and, therefore, any argument in favor of comparability to the subject would be without merit.

Comp #1 . . . There were no sales in this area to indicate a need for an influence code, however, in the next cycle this shall be addressed due to the recent sale of this property for \$460,000.00 in August of 2004. This lot is very comparable to the Hennessey lot.

Comps #2 - 6 . . . This subdivision can be reached by boat only. There have been two sales recorded on one of the lots. The first sale was in January of 2000 with a sales price of \$39,500.00. The second sale was in October of 2002 for \$42,000.00. In reviewing these sales the model indicates that the market considers a lot that can only be accessed by boat not as valuable as one that can be accessed by road. This lot is inferior to the Hennessey lot.

Comp #7 . . . An AB 26 was filed on this lot on November 19th, 2002. In reviewing the

lot I did remove the influence code due to the location (located on a sheer cliff with no water access), with the stipulation that if excavation is made giving the lot any water access the influence will be reapplied. This is a poor comparison to the Hennessey lot due to its steepness and location.

Comp #8 . . . This is a multi parcel card (residential and commercial) with the land attached entirely to the commercial card which is located off the lake. It will be addressed for the next cycle due to a sales price of \$350,570.00 in April of 2003. This land is comparable to the Hennessey property.

Ms. Grimm also addressed Taxpayers' Exhibit 6 (Inequitable Land Values):

Example #1. . . This parcel has an influence code of 52% attached due to the size of lots (greater than 10 acres) as indicated through the sales . . . this lot is steep and has only a small portion of waterfront accessible. It would be a poor comp. for the Hennessey property due to the size and shape of the lot. There is only a small piece of the land that is level with the remaining portion hillside.

Example #2 - 4. . . This lot is valued with the same approach as the Hennessey lot. The first acre is valued at \$42,500 with the residual acreage at \$400.00. This value is multiplied by the influence code (in this case 223%) to arrive at the value of the land. As stated in the appeal, the first acre is the most valuable. This lot would be very comparable to the Hennessey property.

Example: total acreage of the parcel is 2.68, \$42,500.00 x 1 - \$42,500.00 with the remainder of 2.68 X \$400.00.

1 acre x \$42,500.00 = \$42,500.00
1.68 acres x \$400.00 = \$672.00
\$672.00 + \$42,500.00 = \$43,172.00
\$43,172.00 x 2.23 = \$96,274.00

Example #5 . . . These lots are located in Mrs. Hennessey's subdivision and are valued the same as the Hennessey lot. The first acre is valued at \$42,500.00 with the residual at \$400.00 then the 223% influence factor is applied. They are valued as one lot and have one geocode, due to the fact that they are all in one ownership and meet the definition of contiguous parcels. These lots are very comparable to the Hennessey property.

Example: total acreage of the parcel is 8.645, \$42,500.00 x 1 = \$42,500.00 with the remainder of 7.645 x \$400.00

1 acre x \$42,500.00 = \$42,500.00
7.645 acres x \$400.00 = \$3,058.00

\$3,058.00 + \$42,500.00 = \$45,558.00
\$45,558.00 x 2.23 = \$101,594.00

Example #6 . . .I am assuming that the geocode Mrs. Hennessey listed on her sheet titled Inequitable Land Values as . . . was typing error. I could not find a valid geocode for the number listed by Mrs. Hennessey. This lot is accessed by Jim Town road and is the only lot in this section that isn't BLM of Forest Service owned. It has very poor access and does not have the influence code attached. This lot would be very inferior to the Hennessey lot.

Example #7 (Ms. Grimm discusses another assumed erroneous geocode reference).

Example #8 This is a non-qualified ag. land due to its size and is therefore classified differently than the Hennessey's parcel. A direct comparison between the Hennessey property and this property cannot be made.

BOARD DISCUSSION

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:

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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 there is insufficient sales data 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	\$229,890	\$95,290	\$170,110	\$265,400
7	4/22/03	\$547,500	\$194,759	\$352,741	\$102,241	\$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.

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

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 that suggests 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.

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 shall be entered on the tax rolls of Lewis and Clark County by the local Department of Revenue office at a 2003 tax year value of \$94,739.

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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 Lewis and Clark by the local Department of Revenue

office at the land value of \$94,793 for tax year 2003. The decision of the Lewis and Clark County Tax Appeal Board is affirmed.

Dated this 30th day of November, 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 30th day of November 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:

James and Susan Hennessey
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Great Falls, Montana 59405

Tracie Grimm
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