

BEFORE THE STATE TAX APPEAL BOARD
OF THE STATE OF MONTANA

THOMAS & PRISCILLA KORB,)
) DOCKET NO.: PT-2003-128
)
 Appellants,) FACTUAL BACKGROUND,
) CONCLUSIONS OF LAW,
 -vs-) ORDER and OPPORTUNITY
) FOR JUDICIAL REVIEW
 THE DEPARTMENT OF REVENUE)
 OF THE STATE OF MONTANA,)
)
 Respondent.)

The above-entitled appeal was heard on October 28, 2004, in Billings, Montana, in accordance with an order of the State Tax Appeal Board of the State of Montana (Board). The notice of the hearing was duly given as required by law. The taxpayers, Thomas and Priscilla Korb, were represented at the hearing by Thomas Korb. The Department of Revenue (DOR), was represented by Appraiser Maureen Celander.

The duty of this Board is to determine the appropriate market value for the property based on a preponderance of the evidence. By statute (15-2-301, MCA) this Board may affirm, reverse or modify any decision rendered by the county tax appeal board. Testimony was taken from both the taxpayer and the Department of Revenue, and exhibits from both parties were received.

This Board finds that the appeal of the taxpayers shall be denied and the decision of the Yellowstone County Tax Appeal Board shall be affirmed.

STATEMENT OF THE ISSUE

Clark's Riverfront Campground and Resort, Laurel, Montana was permitted on a floodway in 1995 by Yellowstone County's then floodplain manager. The subject buildings were primarily a venue site for "Marlboro's Great Western Adventure." When that contest was cancelled, the taxpayers, as investors in the project, foreclosed on the venture as it came into financial difficulties. The taxpayers continued to improve the property, hoping to host events, such as weddings. The original floodway permit was cancelled and the taxpayers are seeking to have the buildings removed from the tax rolls of Yellowstone County as they claim the buildings now serve no useful purpose. The Department of Revenue's land and building values are not in contention.

FACTUAL BACKGROUND

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 subject property is described as follows:

25 acres in Section 23, Township 2 South, Range 240 East, and the improvements located thereon, known as Clark's Riverfront Campground and Resort, 3001 Thiel Road, City of Laurel, County of Yellowstone, State of Montana, (Assessor Code D029209).

3. For tax year 2003, the Department of Revenue appraised the subject land at a value of \$25,945 and the improvements at a value of \$164,300, for a total valuation of \$190,245.

4. The taxpayers filed an appeal with the Yellowstone County Tax Appeal Board on October 28, 2003, citing the following reasons for appeal:

We have been regulated out of business, rendering the buildings and land as currently situated virtually worthless.

5. In its August 3, 2004 decision, the county board denied the taxpayers' appeal, stating:

Based on the evidence in (sic) testimony presented, the Board finds the taxpayer failed to present sufficient evidence to support the position that the Department of Revenue's appraised value of this property is erroneous, therefore, failed to sustain the burden on appeal.

6. The taxpayers then appealed that decision to this Board on August 26, 2004, citing the following reasons for appeal:

The county has taken all commercial value from our property by failing to permit sewer and campground, and now by taking our permit away plus filing suit. We can neither sell nor use.

TAXPAYER'S CONTENTIONS

In 1995, the Phillip Morris Tobacco Company commissioned an individual to build a frontier town, or venue site, for an event titled the "*Phillip Morris Great Western Adventure Contest*." This coincided with \$500,000 given from Phillip Morris to the Railroad Depot Committee to fix the depot at Laurel, Montana, so that it would look presentable when Phillip Morris brought their train. A permit was obtained to build a private campground with accessory buildings, with certain limitations, which were stated in the permit. All of the specifications of the permitting process were in compliance with regulations. Phillip Morris cancelled its Great Western Adventure contest in 1997, during the time the process for applying for sewer and campground permits was being undertaken. Therefore, with the absence of Phillip Morris and its money, the frontier town venture essentially "went belly up, though it never was bankrupt", according to Mr. Korb. As original investors in the project, the taxpayers foreclosed and

gained control of the property in 1998 or 1999, at which time they also tried to sell it for \$250,000, because "this was way out of our league with what we could do. . .I had planned to work there as a retirement thing while Phillip Morris' contest went on and then work in the campground later, but we ended up owning it . . ." The property was listed for sale at \$250,000 for almost a year. One bid was received during that time, which did not come to fruition.

The DOR's appraisal has been reduced from the original upon visitation with DOR personnel.

The taxpayers have tried for about four or five years to get Yellowstone County to agree to let them complete the project, i.e., bring sewer and water and complete the campground.

In early 2003, the taxpayers developed a "pump and dump" sewer system, which was approved by county officials, but was not ultimately approved due to opposition by neighbors.

The taxpayers attempted, unsuccessfully, to have a campground design completed.

The taxpayers received a letter from FEMA (Federal Emergency Management Agency) stating that Yellowstone County

was not compliant for having allowed this development to exist in the first place, and that the only way the county could come into compliance was to remove it, under a threat to raise flood insurance premiums, and then to cancel the insurance, for those who bought flood insurance. As a result, county officials denied the taxpayers' application for campground and sewer permit, and stated that the existing permits would be taken away, and, essentially, "we were shut down."

The taxpayers improved the interior of the buildings, which had existed mostly in a skeleton form, so that they ended up with five motel rooms, a resident apartment for the manager, and a meeting room ("all of which would have needed sewer and water. . . There wouldn't have been a private campground possible without a sewer system.")

In 2003, the land only was advertised for sale, for one year, at \$150,000, and it did not sell, nor were any offers received. The taxpayers tried to negotiate with the county to get some of their money out of this to move the buildings out. They talked to Zoo Montana and Metra Park and Crow Indians as an historical site. Yellowstone County has filed a lawsuit against the taxpayers to "cease and desist" ,

and, essentially, to clear the ground of all existing structures. Basically, the county is basing its conclusion on (1), the campground never appeared, and (2), that these are not "accessory" buildings as defined in the FEMA floodplain regulations.

The taxpayers do not dispute the DOR's appraised value for the subject property. They are disputing the fact that they are paying taxes on the subject property when Yellowstone County has failed to permit its commercial use. They can't do anything with the property: they can't use it, they can't improve it, and they can't sell it. The taxpayers feel that they are being taxed by the same entity that is preventing them from doing anything with the property. . . "we've got one heck of an albatross."

The taxpayers are asking that the property be valued as though it was bare land because "essentially, that's what we've got is bare land. . .we can't even raise cattle, or cut hay, on it because it's become a cottonwood farm. What can we use it for, I don't know." Failing that, the taxpayers are asking this Board to put the taxes in abatement so that they don't lose the property.

DOR'S CONTENTIONS

Ms. Celander stated that she reviewed the subject property in 1999 and, at that time, the appraised value of the subject land and improvements decreased by approximately \$15,000.

DOR Exhibit A contains a map showing the location of the subject property, south and east of Laurel, Montana, on the Clark Fork of the Yellowstone River. Also contained in the exhibit are photographs and property record cards pertinent to the subject property, sketches of the improvements, a copy of the AB-26 review form that was filed by Thomas Korb on August 2, 2003, and a copy of the appeal form filed with the Yellowstone County Tax Appeal Board. No adjustment in appraised value was made as a result of the AB-26 review.

The buildings at issue here are:

- 1) Building 1: a 20' X 108', or 2,160 square feet building with an 8 foot open porch along the front and wood deck area between Building 1 and Building 2. It is characterized by the DOR as a low cost grade of construction building, built in 1996. It is cost valued at \$36,500, or \$16.90 per square foot.
- 2) Building 2: a 24' X 32', or 768 square foot building, also built in 1996, also listed as low cost grade of construction, with an 8 foot open

porch along the front of the building. It is cost valued at \$13,200, or \$17.19 per square foot.

- 3) Building 3: a 40' X 60', or 2,400 square foot building, also built in 1996, also has an 8 foot open porch area along the front of the building with a 2,218 square foot wood deck area. A large pavilion building, 50' X 112', or 5,600 square feet, is also valued with building 3, for a total cost value of \$82,700, or \$10.34 per square foot.
- 4) Building 4: a 36' X 60', or 2,160 square foot building, with low cost construction, with a four foot open porch along the back of the building and an 8 foot open porch along the front. It is cost valued at \$31,900, or \$14.77 per square foot.

The DOR has appraised the five-acre tract of land where the buildings are situated at a value of \$24,900. The remaining 22.61 acres is valued as non-qualified agricultural land at \$1,045. The total land value is thus \$25,945. The buildings described above are valued at \$164,300 using a replacement cost new less depreciation approach to value. The total property value is \$190,245.

DOR Exhibit B contains valuation information pertinent to the subject Neighborhood 4, which is generally described as the rural Laurel area, or the immediate growing area around the city limits of Laurel in Yellowstone County, sales information used to help establish the land value for the subject neighborhood, the computer-assisted land pricing (CALP) model for the

subject neighborhood, showing residential land sales used for valuation, and especially four sales considered to be the most similar to the subject, with similar influences. The five-acre tract upon which the buildings are located is valued at residential, not commercial, tract land value because it is not currently being used as commercial property.

DOR Exhibit C contains a timeline of the events which have occurred concerning the subject property. The property has been reviewed several times for valuation adjustments. This exhibit also demonstrates that Ms. Celander has contacted several county offices in an attempt to establish ways to make adjustments in value to the subject property, due to economic impact. This exhibit also contains a copy of the floodplain permit for the private campground that was originally to be constructed and a letter outlining five requirements to be satisfied before a floodplain permit can be issued. According to Yellowstone County, these requirements were never satisfied. Also contained in DOR Exhibit C are floodplain variance requests for the campground manager to live onsite for security reasons. This request was

granted and, according to Ms. Celander, there is someone living onsite at Clark's Riverfront Campground. There is an elevation certificate to satisfy building permit application requirement item number two. This was the only requirement that was satisfied, as far as Ms. Celander could determine. The FEMA letter to the Yellowstone County Floodplain Administrator, Jim Kraft, regarding the violations at the subject campground was presented. The letter states that the existing structures have not been permitted, that numerous letters of notification were mailed to the applicant to obtain approval and permits before commencing work. The FEMA letter also states that, once a violation has occurred, a variance cannot be properly granted. Ms. Celander also directed the Board to a follow-up letter from the Yellowstone County floodplain administrator, Jim Kraft, to the taxpayers restating the violations on construction.

Ms. Celander testified that the subject improvements are "already costed as low as I can go, as far as for what's sitting there." She stated that she is mandated to value what is identified as far as construction of buildings, and land. The land value is lower than its

market value and much lower than what its actual purchase price in 1996.

DOR Exhibit D shows the 2002 values at the end of the previous valuation cycle (\$205,609) and the current cycle valuation of \$190,245, a reduction of \$15,364 from the previous cycle value.

BOARD'S DISCUSSION

While the DOR appraisal of the subject property was not in dispute in this appeal, the DOR did an admirable job of outlining its appraisal rationale and procedure.

The Board sympathizes with the taxpayers, but must look at market value. The DOR has satisfactorily demonstrated that it has followed the statutory mandate of §15-8-111 MCA, which dictates that all taxable property must be assessed at 100% of its market value.

The DOR has made substantial reductions from its previous appraisals.

CONCLUSION OF LAW

1. This Board has jurisdiction of the matter under appeal pursuant Section 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. The appeal of the taxpayers is denied and the decision of the Yellowstone County Tax Appeal Board is affirmed.

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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 Yellowstone County by the local Department of Revenue office at a land value of \$25,945 and at an improvement value of \$164,300, as determined by the DOR and affirmed by the Yellowstone County Tax Appeal Board and by this Board.

Dated this 17th day of February, 2005.

BY ORDER OF THE
STATE TAX APPEAL BOARD

(S E A L)

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 17th day of February, 2005, 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:

Thomas and Priscilla Korb
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