

having fully considered the testimony, exhibits, post-hearing submissions and all matters presented, finds and concludes the following:

Issue

The issue before this Board is did the Department of Revenue determine an appropriate market value for the subject property for tax year 2009?

Summary

Based on a preponderance of the evidence, the Board adjusts the valuation of Taxpayers' property to \$297,000.

Background and Evidence

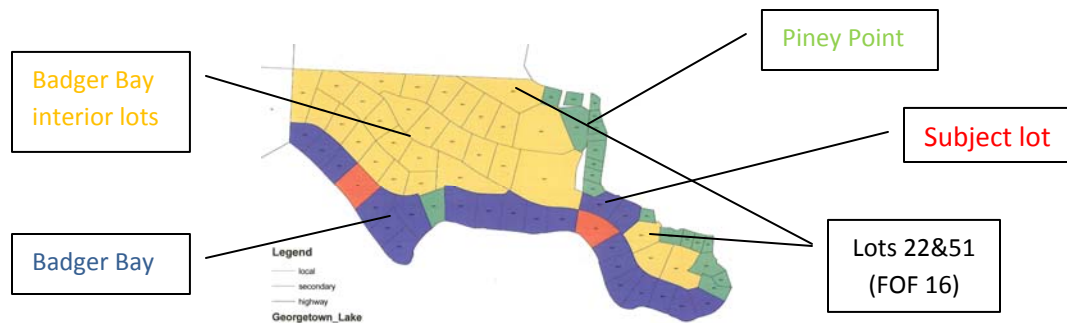
1. Due, proper and sufficient notice was given of this matter and of the time and place of the hearing. All parties were afforded opportunity to present evidence, verbal and documentary.
2. The subject property is a 2.22 acre lot of vacant rural land, on Georgetown Lake with the following legal description:

Section 13, Township 05N, Range 14W, Lot 24, Badger Bay Subdivision, a major subdivision of Granite County, State of Montana. (Exh. 10.)
3. For tax year 2009, the DOR appraised the subject property at a value of \$409,316. (Exh. 10.)
4. Due to a region-wide error in valuation, the Taxpayers received an initial appraisal notice valuing the property at \$72,160, and a subsequent appraisal notice with a much higher value of \$409,316. (Exh. 1)
5. After receiving the second valuation notice, the Taxpayers filed a Request for Informal Review (AB-26) on November 19, 2009. The DOR did not make any adjustments to the subject property during this process. (Exh. 5, Appeal form.)

6. The Taxpayers filed an appeal with the Granite County Tax Appeal Board (CTAB) on January 14, 2010. The Granite CTAB heard the appeal on March 24, 2010, and upheld the DOR value for the subject property. (Appeal Form.)
7. The Taxpayers appealed to this Board on April 15, 2010, and the Board held a hearing in the matter.
8. The Taxpayers purchased the subject property in December 2005 for \$297,000. (Exhs. 3 & 4, Charlton Testimony.)
9. The subject property is a vacant lot in a new subdivision on Georgetown Lake called Badger Bay. Each of the lots in the subdivision has power to the lot, has a pre-designated building site on the property, and meets the latest subdivision code requirements. (Barrett Testimony.)
10. There are both water-front and non-waterfront properties in the Badger Bay subdivision. (Exh. 7.)
11. During the hearing before this Board, the Taxpayers brought evidence which demonstrated that lake-front property on Georgetown Lake was valued differently for several different “neighborhoods” and in many cases at a fraction of their own valuation. The first-acre values range from a low of \$56,500 to a high of \$247,300. (Exh. 9.)
12. The Department uses neighborhoods to group comparable properties and set valuation based on comparable sales. Homogeneous areas within each county are geographically defined as neighborhoods. The residential lots and tracts are valued through the Computer Assisted Land Pricing models (CALP) and the CALP models reflect July 1, 2008, land market values for each neighborhood. (ARM 42.18.110(7).)
13. There are three Georgetown Lake neighborhoods at issue in this appeal, each is apparently a subdivision created at a different time. Each has

different comparable properties, and thus properties of the same size are valued differently even though they may be adjacent. Two of these neighborhoods, Badger Bay and Piney Point, are intermixed on a single peninsula jutting out into the lake. (See map below, Exh. 7.) Badger Bay was subdivided under the current subdivision law and therefore has “amenities,” such as sanitation certification and electric power.

14. Piney Point is an area which was developed prior to current zoning and subdivision regulations, though there are houses on certain Piney Point lots, presumably with sanitation fields and electricity. (Exh. J.)



15. The subject property is in neighborhood 2.D, which is comprised of waterfront lots in Badger Bay subdivision. It is directly adjacent to a Badger Bay neighborhood lot and a Piney Point neighborhood lot.
16. The Taxpayers submitted several property record cards (PRC) showing a number of lake-front properties, with similar characteristics to the subject property but with substantially lower appraised values. (Exhs. 11-16.)
17. The Taxpayers brought evidence that the Piney Point water-front lots abutting the subject property were in a separate neighborhood (2.L) valued at a fraction of the value of the subject property. Lot 10, bordering the subject property on the north, is three-fourths of an acre

- valued at \$65,577 for the land only. Adjusting for the larger size, the subject lot would be valued at \$112,416 if it were valued in the same way. (Exh. 11.)
18. Another Piney Point property, Lot 19, is on the south side of the peninsula where all the other lakefront properties are part of the Badger Bay subdivision. It is 1.97 acres valued at \$65,715 while the 2.66 acre Badger Bay lot 8 immediately east of it was valued at \$467,748. The only difference between them is the “neighborhood” each is in and the date of subdivision. (Exh. 15.)
 19. Taxpayers claim that the reason Piney Point waterfront lots are so low in value is that non-waterfront/interior lots were used in calculating their values in neighborhood 2.L . (Exh. 18, Literski Testimony.)
 20. Taxpayers presented evidence of the sale of Piney Point lot 12 which sold in May of 2007 for \$900,000, indicating that the Piney Point lots, which range in value from \$44,830 to \$67,921, are not appropriately valued. (Realty Transfer Certificate, Exh. 21.)
 21. The next closest waterfront neighborhood is Jericho Bay (neighborhood 2.B) with somewhat larger lots and much lower values than Badger Bay. (Literski Testimony.)
 22. The Department states that the lower values are due to the shallow water in that section of the lake. (Barrett Testimony.) The CALP shows six sales, with the lots ranging from 2.3 to 5.97 acres, and the 2009 reappraisal values ranging from \$173,075 to \$180,141, a fraction of the Badger Bay lots. (Exh. E.)
 23. Furthermore, Taxpayers claimed that even within their Badger Bay neighborhood, similar lots are not treated equally. Specifically, the Taxpayers showed that Lots 22 & 51 of Badger Bay subdivision have

- similar characteristics to their property but were valued as interior lots (in a separate neighborhood, 2.C) rather than as lakefront although both lots have lake frontage. (Exh. 7.) As a result, Lot 22 is valued at \$274,070 for 2.1 acres and Lot 51, which is 4.75 acres, is valued at \$363,375. (Exhs. 12 and 14.))
24. The owners of Lot 8 in Badger Bay petitioned the DOR for a valuation reduction from their 2009 valuation of \$467,748 and had their value reduced more than one-third to \$303,242. (Exhs. 16 and 17.) Lot 8 is larger than the subject property (2.6 acres) and is on the more desirable “view” side of the peninsula. Taxpayers made a similar request but were refused.
 25. At the hearing, the Taxpayers requested the subject land value be adjusted to either \$266,055 or \$278,114. These amounts reflect the Taxpayers’ desire to have the subject property valued as an interior lot because it has many of the characteristics that earned Lots 22 and 51 that treatment by the Department. For example, the subject property has public access roads running through it and adjacent multiuse property (as does Lot 51) and is not on the “view” side of the peninsula. (Exh. 6, Charlton Testimony).
 26. Badger Bay interior lots ranged in value from \$273,758 to \$326,305, considerably lower than Badger Bay waterfront lots but still much higher than adjacent waterfront lots in the Piney Point and Jericho Bay neighborhoods. (Exh. F)
 27. The DOR submitted CALP models for several of the Georgetown Lake neighborhoods including neighborhood 2.D, which includes the subject property. (Exhs. C-G.)

28. The DOR used a CALP (Computer Assisted Land Pricing) model to establish the 2009 land value of \$409,316 for the subject property. The CALP in this instance is based on 17 vacant land sales in neighborhood 2.D, the Badger Bay waterfront lots. Based on the CALP, the DOR set one acre as the base size for a parcel in neighborhood 2.D. In addition, the DOR determined a base acre value of \$247,351 and the value of each residual acre was \$132,803, again based on the CALP. (Barrett Testimony, Exh. G.)
29. The DOR calculated the appreciation of the subject lot from the purchase price of \$297,000 to \$409,316 from the same 2.D CALP, by calculating the increase in value from the beginning of the last appraisal cycle, prior to the subdivision and improvement of the land. (Exh. G.)
30. DOR appraiser Barrett testified that only waterfront property was used in calculating the waterfront CALP models for all neighborhoods, disputing Taxpayers' research showing interior lots were used to value Piney Point. (Barrett Testimony.)
31. In post-hearing filings, however, the DOR stated the neighborhood 2.L CALP model was developed for use during the 2009-2014 appraisal cycle. The model was developed to assist the Department in valuing waterfront property located in the Granite County portion of Georgetown Lake. At the time this model was developed, the Department did not have adequate information relating to Georgetown Lake waterfront sales outside of the Jericho Bay and Badger Bay subdivisions. As a result, the DOR admits it used interior "lake view" property sales to generate values for waterfront properties outside of the Jericho and Badger Bay subdivisions, including Piney Point. (DOR post-hearing submission.) The Department did not use the \$900,000 sale in

- Piney Point as a valid sale because the Department claimed that it was a sale of either an estate property or a foreclosure sale.
32. The RTC for the May 4, 2007 sale does not indicate anything other than an arm's length transaction, and does not indicate that the sale is a foreclosure or otherwise distressed. (Exh. 21.)
 33. There is no disagreement from the parties that waterfront lots are more valuable than non-waterfront lots. Historical sales data indicates that property fronting Georgetown Lake normally sells for a higher price than does property that does not have waterfront access. (DOR post-hearing submission.)

Findings of Fact and Conclusions of Law

The State Tax Appeal Board has jurisdiction over this matter. (§15-2-301, MCA.) At issue is first whether the Taxpayers' property is overvalued, and second, whether the valuation of Taxpayers' property violates the Constitutional requirement of equalization.

Market value is the value at which property would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or to sell and both having reasonable knowledge of relevant facts. (§15-8-111(2)(a), MCA.) In addition, all taxable property must be assessed at 100% of its market value except as otherwise provided. (§15-8-111, MCA.) The DOR is also required to equalize valuations of property:

The same method of appraisal and assessment shall be used in each county of the state to the end that comparable property with similar true market values and subject to taxation in Montana shall have substantially equal taxable values at the end of each cyclical revaluation program hereinbefore provided.

(§15-7-112, MCA.)

Valuation of the Subject Property

The Board must determine, based on a preponderance of the evidence, whether the DOR set an appropriate valuation for the subject property for tax year 2009.

As a general rule, the appraisal of the Department of Revenue is presumed to be correct and the Taxpayers must overcome this presumption. The Department of Revenue should, however, bear a certain burden of providing documented evidence to support its assessed values. *Farmers Union Cent. Exch. v. Department of Revenue*, 272 Mont. 471, 901 P.2d 561, 564 (1995); *Western Airlines, Inc., v. Michunovich*, 149 Mont. 347, 353, 428, P. 2d, 3, 7, cert. denied 389 U.S. 952, 19 L. Ed. 2d 363, 88 S. Ct. 336 (1967).

One of the difficulties presented in the evidence is the infrequency of sales on Georgetown Lake, so the data samples are small. Nonetheless, common sense, and Montana law, tells us that two nearly identical lots, side by side on the lakefront, should not be so differently valued because of the timing of the subdivision, the presence of power to the property, or the presence of a designated building location. There was no evidence presented that the older subdivision lots were not buildable or were limited in their usage by law or covenants to the extent that the property would be valued at less than one seventh the value of the newer subdivision.

We find the DOR's use of CALP 2.L for the Piney Point waterfront lots was clearly inappropriate as it used admittedly lower value interior lots to price more desirable waterfront property. The only sale of a Piney Point waterfront lot in recent years was for \$900,000 and was discounted as a legitimate sale by the DOR because it was sold by an estate. Estate sales are not generally considered trustworthy evidence in land appraisal because they often understate

the value, not overstate it. At the very least, the sale was an indication that the Piney Point properties were not as undervalued as the assessors seem to think.

The Board also finds the DOR's misrepresentation of the basis of the 2.L CALP (which includes the Piney Point lots) to both the Taxpayers and to this Board unacceptable. The Taxpayers demonstrated a significant inconsistency in land valuation for the area surrounding the subject property. This seems particularly troublesome when this peninsula should have already received significant review due to the initial erroneous appraisal notices. Upon review, it appears to this Board as though only certain properties on Georgetown Lake received adjustments to a value close to market value.

The Board finds water-front property in the Piney Point subdivision is demonstrably undervalued.

The DOR's CALP model for the subject property was, however, also subject to error. The CALP is based on 17 sales and, from that sample, the Department set a value for the subject neighborhood and also calculated the rate of appreciation used in the 2009 appraisal. The properties were all available for sale, and sold, around the time of the sale of the subject property in a relatively tight time frame of approximately 3 months. The rate of appreciation for these properties was calculated from the difference between the values at the last appraisal cycle and the sale prices. That rate was then applied to the months between the sale and the 2009 appraisal. However, at the beginning of the last appraisal cycle the Badger Bay subdivision did not exist, no improvements had been made and the lots were not for sale. The sale prices, therefore, captured the substantial appreciation resulting from the improvements and subdivision of the properties. To suggest that same rate of increase continued after the Badger Bay lots were sold, a period when no further improvements were made to the lots, is not logical. In fact, over the

short time covered by the CALP, the prices of lots sold declined substantially from \$4.88 per square foot for the lots sold in November, 2005 to \$3.96 per sq. ft. in December, 2005 to \$3.23 per sq. ft. in January of 2006.

Thus, as the prices were dropping on the market, the CALP indicated that the properties were gaining market value. This inconsistency does not comport with the evidence of the market sales.

The Board finds that the rate of appreciation developed by comparing non-subdivided property to subdivided property, and extrapolating the rate of appreciation for neighborhood 2.D generates a value that is not justified by the evidence presented.

Equalization with Similar Properties

The Taxpayers not only compared their property to other Georgetown lakefront property neighborhoods with lower values to demonstrate their property was overvalued in comparison to these other lots, they also brought information relating to three properties located within the Badger Bay subdivision.

In one case, the DOR valued a property as an interior lot because it has a public access road through the center of the property, between the building site and the waterfront, and is adjacent to multiuse property. (Exh. 14.) For a second lot, the lake-front portion was less than 50 feet of access. (Exh. 12.) A third property, on the view side of the peninsula, was also designated as an interior lot, even though it suffered from less impact of the roadway. (Exh. 16, 17.) For these lots, the DOR valued them as interior lots though all three are lakefront. However, the subject property also has public access roads through the land as well as adjacent multiuse property and taxpayers requested the same treatment.

These discrepancies lead the Taxpayers to argue a violation of the Montana Constitution on equalization grounds. The 1972 Montana Constitution requires the State to appraise, assess, and equalize the valuation of all taxable property. (*Article VIII, Section 2, 1972 Montana Constitution.*) The Montana Supreme Court has considered this issue in *Montana Department of Revenue v. State Tax Appeal Board*, 188 Mont. 244, P.2d 691(1980), and set forth certain criteria delineated by the Iowa Supreme Court to initially consider:

In order to obtain relief upon the ground that his property is assessed inequitably, it is essential that the taxpayer prove (1) that there are several other properties within a reasonable area similar and comparable to his; (2) the amount of the assessments on these properties, (3) the actual value of the comparable properties, (4) the actual value of his property: (5) the assessment complained of; (6) that by a comparison his property is assessed at a higher proportion of its actual value than the ratio existing between the assessed and actual valuations of the similar and comparable properties, thus creating discriminations. *Maxwell v Shivers*, 257 Iowa 575, 133 N.W.2d 709, 711 (1965).

The Taxpayers have introduced a great deal of evidence of disparity in the valuation of lots in their vicinity. They have not been able to show the actual value of their land or any other lot as they are hampered, as is the DOR, by the lack of recent sales. This Board finds that the Department of Revenue values for Georgetown Lake are not in accordance with Montana statutes requiring equalization of property values. (§15-7-112, MCA.)

The Board concludes that the present value assigned to the subject property is not justified by the evidence. The Board concludes the disparate treatment calls for remedy but resists the DOR's solution of moving lots to a lower valuation as "interior lots." A better solution is to leave the property designated as the waterfront property it is and disallow the 38 percent appreciation which was incorrectly calculated by the DOR. We note that other

lots in the CALP are valued at less than their purchase price and that several other lot owners have complained about their assessments and been granted relief. We therefore order that the Taxpayers' Lot 24 be valued at the original purchase price, \$297,000.

This Board would also note that the inconsistencies demonstrated by the Taxpayers rightly require that the Department review valuation on certain other lake-front property (including but not limited to the Piney Point lots), in light of the Department's requirement to equalize value under the Montana Constitution, §15-8-111(1) and (3), MCA, and §15-8-601, MCA (requiring reassessment when property has been erroneously assessed or omitted from taxation).

Order

IT IS THEREFORE ORDERED by the State Tax Appeal Board of the State of Montana that the subject property value shall be entered on the tax rolls of Granite County at a 2009 tax year value of \$297,000.

Dated this 20th of August, 2010.

BY ORDER OF THE
STATE TAX APPEAL BOARD

/s/ _____
KAREN E. POWELL, Chairwoman

(S E A L)

/s/ _____
DOUGLAS A. KAERCHER, Member

/s/ _____
SAMANTHA SANCHEZ, 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 t his Order.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 20th day of August, 2010, 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 Literski & Barbara Charlton	<input checked="" type="checkbox"/> U.S. Mail, Postage Prepaid
5448 Head Lane	<input type="checkbox"/> Hand Delivered
Helena, Montana 59602	<input type="checkbox"/> E-mail

Wes Redden	<input checked="" type="checkbox"/> U.S. Mail, Postage Prepaid
Larry Barrett	<input type="checkbox"/> Hand Delivered
Granite County Appraisal Office	<input type="checkbox"/> E-mail
P.O. Box 38	<input type="checkbox"/> Interoffice
Philipsburg, Montana 59858-0038	

Michelle R. Crepeau	<input type="checkbox"/> U.S. Mail, Postage Prepaid
Office of Legal Affairs	<input type="checkbox"/> Hand Delivered
Department of Revenue	<input type="checkbox"/> E-mail
Mitchell Building	<input checked="" type="checkbox"/> Interoffice
Helena, Montana 59620	

Jess Vance, Chairman	<input checked="" type="checkbox"/> U.S. Mail, Postage Prepaid
3 Rest Haven Lane	<input type="checkbox"/> Hand Delivered
Granite County Tax Appeal Board	<input type="checkbox"/> E-mail
Philipsburg, Montana 59711	

/s/ _____
DONNA EUBANK
Paralegal