

BEFORE THE STATE TAX APPEAL BOARD
OF THE STATE OF MONTANA

RALPH J. & SHARON L. MADSEN,) DOCKET NO.: PT-1999-7
)
 Appellants,)
)
 -vs-)
)
THE DEPARTMENT OF REVENUE OF) NUNC PRO TUNC
THE STATE OF MONTANA) FACTUAL BACKGROUND,
) CONCLUSIONS OF LAW,
) ORDER and OPPORTUNITY
 Respondent.) FOR JUDICIAL REVIEW

The above-entitled appeal was heard telephonically on June 13, 2000, 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.

Ralph Madsen, appearing telephonically on behalf of the taxpayers, presented evidence and testimony in support of the appeal. The Department of Revenue (DOR), represented telephonically by Appraiser Jackie Ladner, presented testimony in opposition to the appeal. Testimony was presented and exhibits were received prior to the hearing from the DOR. The Board then took the appeal under advisement. The Board having fully considered the testimony, exhibits, and all things and matters presented to it by all parties, finds and concludes as follows:

FACTUAL BACKGROUND

1. Due, proper and sufficient notice was given of this matter, the hearing, and of the time and place of the hearing. All parties were afforded opportunity to present evidence, oral and documentary.

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

Land only described as Tract 7 on H-1276, containing 0.400 acres in Section 28, Township 25 North, Range 20 West, County of Lake, State of Montana. (Assessor Number 13907).

3. The DOR appraised the subject land at \$167,800 for the 1999 tax year. However, the property receives a "land cap" adjustment, provided as an amendment by the 1999 legislative session and codified under Section 15-7-111 (4), which has resulted in an assessed value of \$69,675 for the tax year in question.

4. For the 1999 tax year, the taxpayer appealed to the Lake County Tax Appeal Board on September 9, 1998 requesting a reduction in the land value to \$75,000, citing the following reason for appeal:

Appraised value far exceeds the actual.

5. In its November 8, 1999 decision, the County Board denied the appeal, stating:

Appraised values are supported by D.O.R. data.

6. The taxpayers then appealed that decision to this Board on December 11, 1999, stating:

I will present new evidence and new testimony.

TAXPAYER'S CONTENTIONS

The subject land contains approximately 105 feet of frontage on Flathead Lake.

Mr. Madsen testified that his chief argument in favor of the adoption of his requested value of \$75,000 was "misinformation supplied by the DOR." When Mr. Madsen first discussed the appraisal at issue with Ms. Ladner, he was advised that the sales information used in valuing the subject land was obtained from a geographic area starting at Dayton, Montana to the Flathead County line. Mr. Madsen then began to conduct sales research in this area "assuming it was accurate. She's an employee of the Department of Revenue. I spent many days and I spent much effort and considerable funds in gathering information and pictures to support my case." Mr. Madsen concentrated his research area on the Shelter Bay area of Flathead Lake because of its proximity to the subject land.

However, at the hearing before the county board, Mr. Madsen learned that the DOR excluded Shelter Bay sales from its CALP (computer-assisted land pricing) model because it considers Shelter Bay to be "unique" in terms of development amenities (the presence of sewer and water) and therefore not comparable to other vacant land in the neighborhood in that "it's a little subdivision with covenants. . ." (Jackie Ladner testimony, State Tax Appeal Board hearing, June 13, 2000). Since Mr. Madsen was never advised

of the DOR's exclusion of the Shelter Bay area, he feels he engaged in a futile expenditure of energy and time in preparing to defend the appeal. "So, the way I look at it, in all fairness, I don't believe I should have been given inaccurate information. I believe I should have been given information I could rely on. And, being that I wasn't, I don't believe I should have to go back and rebuild a case and I feel that the decision should be granted in my favor because of the errors by the DOR."

When asked by this Board how he arrived at his requested value of \$75,000, he stated "I just went by what I paid for it versus what they have it on today. I paid \$65,000 for the whole place in '89. That included a house and a little garage and everything and so now their value on the land alone is about three times that much, nearly two and a half times at least." He also stated that " I know of a couple of other lots that are about the same size as mine that sold for that amount in about the same period or time frame. . . other people that I know purchased their lots. . . about '89 and what they've told me that theirs are valued at about \$75,000. So, if that is true, that's what I based it on, but I based it also on the fact of, if you take the price of the Shelter Bay lots versus my lots, that's basically where I got the information from is the lots there and what they are assessed at and what mine should be if it was used in the comparison aspect of it, then that's the value it should be compared to what theirs

are."

Mr. Madsen testified that, "in '96, maybe '97, '98", he razed the structures that were present on the property at the time of his purchase and has constructed a new home.

Mr. Madsen stated that he appealed the valuation of the subject land to the county board in 1993. He stated that the county board granted his requested value of \$48,337, for the reason "topography discount, very steep lake front." The record does not indicate that the DOR appealed that 1993 decision to this Board.

According to Mr. Madsen, he is unable to walk into the lake from any of his lake frontage area due to its steepness. It is necessary to either climb down the rocks or dive off the end of the dock. In his view, the four properties referenced in DOR Exhibit 3 enjoy "much nicer", i.e., less rocky and steep access to the lake.

DEPARTMENT OF REVENUE CONTENTIONS

The subject 105 feet of lake frontage (.40 acre lot) was valued at \$1,620 per front foot. No adjustment has been made in recognition of topography or terrain features, such as the steep access to the water front claimed by the taxpayers.

DOR Exhibit 2 is a statement of the location of the subject land, its size and dimensions, and the structures contained on the lot. Ms. Ladner testified that she submitted this exhibit to

demonstrate the ability to build on the lot. The exhibit states that, in addition to the home, a boathouse is situated at the water's edge with a dock and a boat rail system.

DOR Exhibit 3 is a document describing four vacant land sales "that were used in the neighborhood to help value and justify the value that was put on Mr. Madsen's property." These parcels are all in the same township and range as the subject property and all contain 100 feet of lake frontage and are, in terms of lake shore topography, the most comparable to the subject.

Summarized, the exhibit states that the average sale price was \$1,512 per front foot and the time adjusted average sale price was \$1,817 per front.

Sale Number #1: steep lot - note retaining walls on neighbor's lot. At high water, there is no beach. Sold for \$2,000/lakefront foot in 1994.

Sale #2 - Rocky beach - the lot has building restrictions on it. Sold for \$1,650/lakefront foot in 1995. A long rail system is required to launch a boat.

Sale #3 - Steep lot - all the houses have walk-out basements. Sold for \$1,300/lakefront foot in 1994. Long docks are built in this area to accommodate swimmers and boaters.

Sale #4- Steep lot with nice beach - Sold for \$1,110/lakefront foot in 1993. Resold in 1999 for \$1,990/lakefront foot.

All of these sale properties are steep and have less than premium lakeshore. As with all properties on Flathead Lake, the water is not accessible during winter months.

In an attempt to justify its time adjustment, Ms. Ladner presented DOR Exhibit 4, which contains a statement by the DOR that "paired sales indicate appreciation of 1%-2% per month to be acceptable. DOR used 1.2046% per month to adjust sales to a January 1, 1996 appraisal date. . . ."

Ms. Ladner testified that these paired sales are properties that sold vacant more than once. Exhibit 4 contains sales information relating to 18 properties "in the same neighborhood as the subject but outside its township and range" that sold more than once during the time frame beginning in April of 1991 and ending in May of 1999. The percentage increases demonstrated through the paired sales analysis range from 0.76% to 11.90% per month.

DOR Exhibit 5 is a statement that "This property receives a Land Cap Adjustment, which results in a taxable value of \$69,675. An adjustment to land value will not affect his tax base."

The record before the county tax appeal board contained a document entitled "Land Value Regression", or computer-assisted land pricing (CALP) model, from which the subject value was determined. For the subject neighborhood 302-4, the DOR determined a base size of one acre and 100 front feet of water frontage, a base value of \$26,000 for the first acre and \$1,400 for 100 feet of frontage, and a residual value of \$3,000 per acre for acreage under

or over one acre and \$1,000 per front foot for footage over or under 100 front feet. These base values and base sizes were determined through analysis and statistical manipulations of sales data from the time period between 1992 and 1995 to determine a market value as of January 1, 1996, with an application date of January 1, 1997. A rate of value appreciation was determined to be 1.2046% per month based upon a comparison of the actual sales price to the DOR's assessed value. Five of the thirteen sales referenced on this exhibit contained the notation that the properties were steep and rocky to the lake shore.

In response to the taxpayers' claim that their sales research efforts proved futile in light of DOR misinformation regarding the sales area used, Ms. Ladner testified that "he had come to the counter of the office and basically asked me what area I used and I looked at the map and I said from here to here is what I used to value this, and from here to here included Shelter Bay because it is in the same township/range. And that was basically what I had said and that was the last time that we met and discussed. We didn't go into great depth. I didn't pull out my CALP tables. I didn't show him specifically the neighborhood or anything like that, just sort of a general idea of where I knew this neighborhood was and, at the time, had not remembered that Shelter Bay had been pulled out." Ms. Ladner stated that she is unsure why Shelter Bay parcels, which are more developed

properties, have commanded a lesser sales price than lots elsewhere along the west shore of Flathead Lake. In addition, Ms. Ladner stated that the DOR has been unable to find recent sales data pertaining to the Shelter Bay area. These sales date back to 1992, with one occurring in 1995. Shelter Bay was excluded from the pricing model for the subject neighborhood for the prior appraisal cycle also, according to Ms. Ladner.

BOARD DISCUSSION

The DOR's testimony and exhibits assert that the DOR used "rocky lake shore sales to value rocky lake shore lots." Therefore, according to the DOR, the appraised value of the subject property was obtained through the use of sales of lots containing the same defects claimed by the taxpayers, i.e., steep beach access or "cliffiness" to the water's edge.

The Board finds and concludes that the DOR sales, as demonstrated on its CALP model presented at the county board hearing, do include sales of properties similar to the subject in terms of terrain and topographical features. These sales appear to contain a variety of properties with a variety of features and sizes. The sales data doesn't appear to indicate that the presence of a rocky versus a gently rolling beach has a significant impact upon the sales price commanded for lake frontage in Lake County.

The Board notes that the time adjusted values placed upon the four properties referenced in DOR Exhibit 3 average \$1,800 per

front foot and that the taxpayers' land is appraised at less than that, or \$1,620 per front foot.

In contrast, the taxpayers have presented no evidence, in the form of sales information or comparable properties, in support of their requested value or in rebuttal of the DOR value. The record contains merely anecdotal information about the price for which the taxpayers believe neighboring properties have been purchased and, apparently, a requested value which bears some relationship to the actual purchase price in 1989 plus \$10,000 to bring the requested value closer to the DOR assessed values of Shelter Bay properties.

The Board learned that the 1999 tax year value assigned to the subject property is \$51,825; a value considerably less than the taxpayers' requested value. This value was accomplished through the application of the so-called land cap described below.

Senate Bill 184, passed by the 1999 Legislature and codified under Section 15-7-111 (4), MCA, with retroactive applicability to tax years beginning after December 31, 1998, provided that the assessed value of land cannot exceed 75 percent of the improvement value. The minimum value of land cannot fall below 75 percent of the current statewide average of the assessed value of a residence, which was \$51,825 in 1999.

Apparently, changes were made to the improvements in 1999, which resulted in a tax year 2000 land cap value on the

subject land of \$69,675. \$69,975 is the value which shall remain on the tax rolls for tax years 2000 and 2001, unless further changes are made to the improvements. In 2001, the next legislative session will convene. This was done in compliance with the provisions of 15-7-111 (4), MCA. In effect, it's as though DOR had appraised this land at \$51,825 for the tax year in question

The Board sympathizes with the taxpayers concerning the apparent erroneous information given to Mr. Madsen during his initial consultation with Ms. Ladner and can well understand his frustration. All government agencies could prevent such frustration by carrying out their obligation to provide courteous and efficient customer service.

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. It is true, as a general rule, that the appraisal of the Department of Revenue is presumed to be correct and that the taxpayer must overcome this presumption. The Department of Revenue should, however, bear a certain burden of providing documented evidence to support its assessed values. (Western Airlines, Inc.,

v. Catherine Michunovich et al., 149 Mont. 347, 428 P.2d 3, (1967).

The Board concludes that the DOR met that burden.

5. The appeal of the taxpayers is hereby denied and the decision of the Lake County Tax Appeal Board is affirmed. The Board concludes that the best indicator of market value is that determined by the DOR at \$167,800. However, the assessed value was reduced to \$51,825 due to the application of the provisions of Senate Bill 184, or Section 15-7-111 (4), MCA.

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ORDER

IT IS THEREFORE ORDERED by the State Tax Appeal Board of the State of Montana that the subject land shall be entered on the tax rolls of Lake County by the Assessor of that county at the 1999 tax year value of \$51,825 as determined by the Department of Revenue pursuant to Section 15-7-111 (4), MCA.

Dated this 20th day of June, 2000.

BY ORDER OF THE
STATE TAX APPEAL BOARD

GREGORY A. THORNQUIST, Chairman

(S E A L)

JAN BROWN, Member

JEREANN NELSON, 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 20th day of June, 2000, the foregoing Amended 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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