

BEFORE THE STATE TAX APPEAL BOARD  
OF THE STATE OF MONTANA

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BONNIE M. & ELWIN L. MANICKE,	)	DOCKET NO.: PT-2009-67
	)	
Appellants,	)	
-vs-	)	FACTUAL BACKGROUND,
	)	CONCLUSIONS OF LAW,
THE DEPARTMENT OF REVENUE	)	ORDER and OPPORTUNITY
OF THE STATE OF MONTANA,	)	FOR JUDICIAL REVIEW
	)	
Respondent.	)	

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**Statement of Case**

Bonnie and Elwin Manicke (Taxpayers) appealed a decision of the Lake County Tax Appeal Board (CTAB) relating to the Department of Revenue’s (DOR) valuation of their properties identified as Section 03, Township 22N, Range 20W, Certificate of Survey (COS) 4706 Tract B and COS 4798 Tract E, of Lake County, State of Montana. The Taxpayers argue the DOR overvalued the property for tax purposes, and they seek a reduction in value assigned by the DOR. At the State Tax Appeal Board (Board) hearing held on August 5, 2010, the Taxpayers were represented by Elwin L. Manicke, who provided testimony and evidence in support of the appeal. The DOR, represented by Michele Crepeau, Tax Counsel; Deb Doney, Area Manager and Jeff Megahan, DOR appraiser, presented testimony and evidence in opposition to the appeal.

The Board having fully considered the testimony, exhibits, and all matters presented, finds and concludes the following:

### Issue

The issue before this Board is did the Department of Revenue err in not combining the subject properties for tax purposes for tax year 2009?

### Summary

Bonnie and Elwin Manicke are the Taxpayers in this proceeding and, therefore, have the burden of proof. Based on a preponderance of the evidence, the Board upholds the decision of the Lake County Tax Appeal Board.

### Background and Evidence Presented

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 properties are two adjacent lots, one with 7,000 square feet and the other with 9,800 square feet, located within the city limits of Polson, Montana, with the following legal description:

Section 03, Township 22N, Range 20W, COS 4706, Tract B and COS 4798, Tract E, in the City of Polson County of Lake, State of Montana. (Exhs. D & E.)
3. For tax year 2009, the DOR appraised the subject properties at a value of \$102,355; \$102,000 for the land and \$355 for the improvements. (Exhs. D & E.) Only the land is under appeal. (Appeal Form.)
4. The DOR used a CALP (Computer Assisted Land Pricing) model to value the subject properties. This resulted in a land value for the subject properties of \$52,750 and \$49,250. The CALP in this instance is based on 23 vacant land sales. The CALP sales and the subject property are all located in Neighborhood 100.1, which are geographic areas designated by the DOR as having similar characteristics for purposes of valuation.

Based on the CALP, the DOR established a square foot value of \$5.33 for the first 10,000 square feet and \$1.23 a square foot for the residual. (Megahan Testimony, Exh. A.)

5. The Taxpayers filed a Request for Informal Review (AB-26) on September 25, 2009, asking for an informal review meeting to provide additional information. (Exh. 1, p. 7.) DOR did not meet with the Taxpayer. (Manicke Testimony).
6. On November 10, 2009, the DOR did not make any adjustments to the subject property, noting:

“Lots would need to be re-surveyed into one lot. Please contact Lake Co, +/- or Polson planning Dept.” (Exh. 1, p. 7.)
7. The Taxpayers filed an appeal with the Lake County Tax Appeal Board (CTAB) on November 25, 2009, stating:

“Request to value adjoining lots as one tract under single ownership. This is consistent with DOR’s valuation(*sic*) of numerous other properties in Polson where two or more adjoining lots under single ownership are valued as one larger tract. With a cursory research(*sic*) we can find at least 15 other properties in Polson with adjoining lots under single ownership that are valued by DOR as one larger tract. We are only asking for the same consideration given to numerous others with the same situation. We are asking that the DOR comply with MCA 15-7-103(1)(a) and MCA 15-7-131.” (Appeal Form.)
8. The Lake CTAB heard the appeal on March 31, 2010, and upheld the DOR value for the subject property. (Appeal Form.)
9. The Taxpayers appealed to this Board on May 6, 2010, stating:

“No documentation was provided by the Department of Revenue (DOR) at the CTAB March 31, 2010 appeal hearing to support the reason given by the Lake County CTAB for the disapproval.

The DOR was given approximately 20 days to provide a written reply to information we presented at the CTAB hearing. The DOR was also given an opportunity to provide additional post hearing information. We were not given an opportunity to reply to the

DOR's post hearing information prior to the disapproval decision by CTAB. None of the post hearing information provided by the DOR supports the decision reached by the CTAB.

The fact remains that the DOR's appraisal and valuation of our property in(*sic*) neither uniform or fair." (Appeal Form Attachment.)

10. The Taxpayers appealed the same issue for the 2005 tax year. A final decision of this Board affirming the Lake CTAB was made on August 31, 2006 and is set forth in *Bonnie M. & Elwin L, Manicke vs. Department of Revenue, Docket PT-2005-5*. There has been no significant change in the property since the last appraisal cycle. (Manicke Testimony.)
11. The Taxpayers submitted a map with Montana Cadastral general parcel information on 19 identified properties. The Taxpayers claim all of these comparables are under single ownership, containing two or more lots, and valued by the DOR as one tract. (Exh. 1, p.2-3, Exh. 2.)
12. DOR supplied the CTAB with a post-hearing submission outlining the reasons for combining the Taxpayer's comparable properties for tax purposes. (Exh. 1, p.18-20.)
13. The DOR has discretion to value multiple lots as one tract when it appears the usefulness of an individual lot would be unsatisfactory, such as, an individual lot that is too small to build on or the improvements span across boundary lines. (Megahan Testimony.)
14. DOR testified there are hundreds of adjacent properties in Lake County with single ownerships valued in the same manner as the Taxpayers. (Megahan Testimony.)

#### **Principles of Law**

1. The State Tax Appeal Board has jurisdiction over this matter. (§15-2-301, MCA.)

2. It is the duty of the Department of Revenue to accomplish the appraisal of all taxable city and town lots. (§15-7-101 MCA.)
3. It is the duty of the Department of Revenue to implement a general and uniform method of appraising city and town lots. (§15-7-103(1)(b), MCA.)
4. All taxable property must be assessed at 100% of its market value except as otherwise provided. (§15-8-111, MCA.)
5. 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.)
6. Residential lots and tracts are valued through the use of CALP models. Homogeneous areas within each county are geographically defined as neighborhoods. The CALP models reflect July 1, 2008, land market values. (ARM 42.18.110(7).)
7. The appraised value supported by the most defensible valuation information serves as the value for ad valorem tax purposes. (ARM 42.18.110(12).)
8. The state tax appeal board must give an administrative rule full effect unless the board finds a rule arbitrary, capricious, or otherwise unlawful. (§15-2-301(4), MCA.)
9. Each individual tract of record continues to be an individual parcel of land unless the owner of the parcel has joined it with other contiguous parcels by filing with the county clerk and recorder. (§76-3-103(16)(b), MCA.)
10. As long as a taxpayer's property is not overvalued in the reappraisal process, he cannot secure a reduction in his own appraisal on the ground

that another taxpayer's property is under appraised. *Patterson v. Department of Revenue*, 171 Mont. 168, 557 P.2d 798 (1976).

### **Finding of Fact and Conclusions of Law**

The Board must determine, based on a preponderance of the evidence, whether the DOR set an appropriate valuation for the subject properties for tax year 2009. In this instance, we will review whether the DOR properly valued Taxpayers' two lots as separate lots for tax purposes.

As a general rule, the appraisal of the Department of Revenue is presumed to be correct and 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. *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).

Given the statutory definition of market value, *i.e.*, the value at which property would change hands between a willing buyer and a willing seller, the "market" approach using comparable sales is the preferred approach in valuing residential property when adequate data is available.

This Board concludes the evidence presented by the DOR did support the values assessed. This Board also concludes the Taxpayer has not provided evidence that the DOR appraised value for July 1, 2008 is not fair market value. As part of the standard mass appraisal system, the DOR uses a CALP model, in this case, based on 23 vacant land sales. From that sample, they applied a size adjustment in setting those values of a standard lot. As a result of this approach, smaller lots are valued at more per square foot than larger lots for the subject neighborhood.

The Taxpayers' only argument is their two adjoining subject properties, under single ownership, should be valued as one tract of land. They claim this would be consistent with several other tracts of land in Polson. (FOF 11.) They believe by combining the subject properties for tax purposes, they would receive the same consideration of economies of scale as other taxpayers. They also argue that such treatment would be fair and equitable tax treatment as provided for in Montana statutes.

The DOR contends this issue is merely a matter of law. They argue the statutes allow the Department some discretion when combining lots for tax purposes. They contend any of the following examples would be justifiable reasons to reach the conclusion that parcels could not be sold separately and, therefore, could be combined to establish market value:

1. Two parcels under one ownership and located next to each other have a dwelling that spans the boundary line between the two parcels.
2. A dwelling encroaches on the zoning set back between the two parcels and access through one parcel is necessary to access the other parcel.
3. A parcel has accessory buildings on the other parcel.
4. The owner has formally amended the plat to reflect the deletion of the boundary line between the two parcels. (§76-3-103(16)(b)(ii).)

The Taxpayers raised several inconsistencies with the DOR application of combining properties in Polson. Unfortunately, the Board does not have sufficient evidence to determine whether the properties may be subject to some of the fact specific requirements set forth above. Thus, we cannot determine, in this instance, whether the other properties are properly valued by the DOR. It is, however, irrelevant in this instance because the DOR has properly valued the subject property and there is no evidence of incorrectly valued properties in the subject neighborhood. (*see* FOF 12 &13.)

Thus it is the opinion of this Board that the assessed value set by the DOR is correct and the decision of the Lake County Tax Appeal Board is affirmed.

**Order**

IT IS THEREFORE ORDERED by the State Tax Appeal Board of the State of Montana that the subject properties' values shall be entered on the tax rolls of Lake County at a 2009 tax year value as determined by the Department of Revenue and affirmed by the Lake County Tax Appeal Board.

Dated this 17th 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 18th 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:

Bonnie & Elwin Manicke 901 5 <sup>th</sup> Ave. E. Polson, Montana 59860	<input type="checkbox"/> U.S. Mail, Postage Prepaid <input type="checkbox"/> Hand Delivered <input type="checkbox"/> E-mail
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Deb Doney Jeff Megahan Lake County Appraisal Office 3 - 9 <sup>th</sup> Ave. W. Polson, MT, 59860	<input type="checkbox"/> U.S. Mail, Postage Prepaid <input type="checkbox"/> Hand Delivered <input type="checkbox"/> E-mail <input type="checkbox"/> Interoffice
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Michelle R. Crepeau Office of Legal Affairs Department of Revenue Mitchell Building Helena, Montana 59620	<input type="checkbox"/> U.S. Mail, Postage Prepaid <input type="checkbox"/> Hand Delivered <input type="checkbox"/> E-mail <input type="checkbox"/> Interoffice
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Louise Schock, Secretary 53780 Schock Lane Lake County Tax Appeal Board St. Ignatius, Montana 59865	<input type="checkbox"/> U.S. Mail, Postage Prepaid <input type="checkbox"/> Hand Delivered <input type="checkbox"/> E-mail
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/s/ \_\_\_\_\_  
DONNA EUBANK  
Paralegal