

BEFORE THE STATE TAX APPEAL BOARD
OF THE STATE OF MONTANA

MEADOWLARK COUNTRY CLUB,)	
INC.,)	
Appellant,)	DOCKET NO.: PT-1997-98
-vs-)	
THE DEPARTMENT OF REVENUE)	FACTUAL BACKGROUND,
OF THE STATE OF MONTANA,)	CONCLUSIONS OF LAW,
Respondent.)	ORDER and OPPORTUNITY
	<u>FOR JUDICIAL REVIEW</u>

The above-entitled appeal was heard on October 8, 1999, in the City of Great Falls, 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 taxpayer, represented by Milton O. Wordal, attorney. John Nerud, Cascade County Planning Director; and Ron Hepp, property owner, presented testimony. The Department of Revenue (DOR), represented by Pete Fontana, Rich Dempsey and Jim Berg, appraisers, presented testimony in opposition to the appeal. Testimony was presented, exhibits were received, and a schedule for post-hearing submissions was established. Having received the post-hearing submissions in a timely fashion, the Board then took

the appeal under advisement. The Board, having fully considered the testimony, exhibits, post-hearing submissions, and all things and matters presented to it by all parties, 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 a portion of the Meadowlark Country Club, comprised of approximately 120 acres, County of Cascade, State of Montana. (Assessor Code - 2424700).

3. For the 1997 tax year, the DOR appraised the subject land at a value of \$900,000.

4. The taxpayer appealed to the Cascade County Tax Appeal Board on December 17, 1997 requesting a reduction in value to \$480,000, stating:

The property is appraised in excess of its fair market value under appropriate appraisal considerations, including but not limited to location and condition of property. The property has been incorrectly classified.

5. In its February 5, 1998 decision, the county board denied the appeal, stating:

After hearing testimony and reviewing exhibits, the Board finds the Dept. of Revenue's values of \$8,295.00 and \$900,000.000 on land, \$445,960.000 on buildings, and

\$1,354,340.00 on golf course improvements do not accurately reflect true market value. The appeal is disapproved.

6. The taxpayer then appealed that decision to this Board on March 5, 1998, stating:

The golf course land as unimproved is appraised in excess of its fair market value using appropriate appraisal considerations including, but not limited to, location and condition of property (particularly its location in relation to the flood plain).

7. The valuation issue before this Board is solely that of the 120 acre parcel of land valued at \$900,000 by the DOR, or \$7,500 per acre. The taxpayer is requesting a value of \$4,000 per acre.

TAXPAYER'S CONTENTIONS

The taxpayer takes issue with the DOR's use of residential sales occurring in the Woodland Estates area to value the subject property. The subject 120 acre parcel is of substantially different character, in terms of contour, than the Woodland Estates area, and an extraordinary variance in parcel size exists. Most of the lots in Woodland Estates are able to be developed as they currently exist because the terrain is such that many areas of elevation exist. This situation does not exist to any significant degree on the subject property. To draw any sort of conclusion of comparability is suspect, according to the taxpayer.

Taxpayer's Exhibit 1 is a copy of a 1990 topographic map published by the Public Works Department of the City of Great

Falls. Mr. Wordal stated that he offered this exhibit to demonstrate that the highest elevation on the subject golf course is 3,320 feet and that very little of the total acreage actually reaches that elevation. He estimated that only 15 percent of the course has an elevation of 3,320 feet.

John Nerud, Cascade County Planning Director, testified on the impact of flood regulations on development of land which has an elevation below the base flood elevation.

He discussed the distinctions between land in the floodway and that in the floodplain as those differences impact development potential. Residential and commercial development are prohibited in the floodway. Fill dirt cannot be added in the floodway to increase elevation. Recreational usage is allowed, such as golf courses.

The 100 year floodplain does allow residential uses provided that specific conditions are met with regards to elevations. The subject property is primarily within the 100 year floodplain and not within the floodway. Residential development could be permitted if the ground was brought up to the base flood elevation, i.e., 3,319 or 3,320 feet. The lowest finished floor of a structure would then have to be placed two feet above that fill. The majority of the subject land would require fill ranging from one to six feet in order to place a structure upon it.

A single-family residence septic permit would likely not

be issued by the Department of Environmental Quality and/or the local health department for the subject property. Therefore, while a construction permit could be issued provided that fill requirements are met, health officials would not allow septic systems within a 100 year floodplain. If a developer applied to create a subdivision, he would have to create his own sewage disposal systems, or, alternatively, petition the city for annexation and use existing city systems. The subject golf course area of 120 acres is not currently annexed to the City of Great Falls.

Woodland Estates was created prior to and outside of subdivision regulations restricting development to residential dwellings. Most of Woodland Estates has been designated floodway ground by FEMA (Federal Emergency Management Agency). However, according to Mr. Nerud, Woodland Estates was developed prior to the adoption of floodplain regulations in 1979. Therefore, in areas of now prohibited development, houses already existed prior to 1979.

Woodland Estates is an area comprised of a number of sand dunes and, therefore, has many areas of elevations even in areas that are shown in the floodway. One of the provisions of floodplain regulations allows construction on floodway ground if an area of natural elevation exists which is above the base flood elevation and contains enough area to fit the floor plan of a structure, and that area extends 15 feet in every direction. The

base flood elevations in Woodland Estates are between 3,332 and 3,333 feet.

Taxpayer's Exhibit 3 is a copy of a map of a portion of the Woodland Estates Subdivision showing the location of parcels whose sales prices were used by the DOR in determining the value of the subject property. Mr. Wordal stated that four of these parcels are developed with residential dwellings and that at least two are probably able to be developed.

Taxpayer's Exhibit 2 is a copy of land sales information used by the DOR in arriving at the subject land value. This document shows that the largest parcel was 2.865 acres. The subject property is 120 acres, thus calling into question the true comparability of those sales to the subject.

Having disputed the comparability of the Woodland Estates sales to the subject, the taxpayer presented a series of exhibits concerning properties deemed to be more comparable.

Taxpayer's Exhibit 5 is a copy of a sales agreement concerning a 58.85 acre parcel described as Plat Mark 1, Section 19, Township 20 North, Range 4 East, four blocks outside the city limits of Great Falls. This parcel sold for \$240,000 on February 10, 1995. Mr. Wordal stated that some of this property was then conveyed by the buyers to a corporation called Lone Tree, Inc. 3.5747 acres in commercial usage, as well as 7.7976 acres referred to as Phase I, were annexed to the City of Great Falls. Phase II

has been preliminarily platted, but has not been annexed, nor has there been any final plat approval; and the balance, some 30 acres, remains in the county and has not been submitted for annexation consideration by the city. This property was primarily developed for consideration as sites for modular housing. Currently, the project is subject to foreclosure proceedings. Mr. Wordal stated that this sale points to a per acre price of \$4,080 for the raw land, which is not subject to any floodplain restrictions.

Taxpayer's Exhibit 6 is a copy of a sales agreement concerning a 27.631 acre parcel located on Lots 8 through 10 and 13 through 15, Beebe Tracts Addition to the City of Great Falls. This parcel sold for \$139,500 on December 9, 1996. The sale price of this property, also not subject to floodplain restrictions, points to a per acre value of \$5,048.

Mr. Hepp testified concerning property that he owns on the Sun River approximately one and half miles west of Great Falls. In 1995, Mr. Hepp was approached by a group of individuals who were contemplating the development of a golf course facility referred to as the "Buffalo Jump Golf Course." Mr. Hepp testified that the parcel under consideration at that time was comprised of approximately 360 acres bordering the Sun River on the north side and McIver Road on the south.

This parcel was, at the time of the contemplated development, and currently is being used as irrigated crop land for

small grains, corn and hay. Approximately 278 of the 360 acres was sprinkle-irrigated from the Sun River.

Mr. Hepp testified that he was offered, and agreed to, \$2,000 per acre for the 360 acres from the individuals contemplating the golf course. This offer included water/irrigation rights from the Sun River. Ultimately, this sale did not close because, according to Mr. Hepp, the potential buyers came to the conclusion that the asking price was excessive and proceeded to look for alternative properties.

Mr. Hepp offered his opinion that, while his property is located in the 100 year floodplain, sufficient ground outside the floodplain exists upon which to place the usual structures associated with a golf course (clubhouse, cart storage, etc.) as well as housing structures. He speculated that a parking lot might have had to have been built within the floodplain.

Mr. Hepp testified that he has developed a minor subdivision of five lots in other land along the Sun River under his ownership. Of those five lots, he and his father are keeping two. He has offered the remaining three lots, totaling approximately 139 acres, for sale. Two of these lots, totaling approximately 111.6 acres, were being negotiated for sale at \$1,573 per acre at the time of the hearing before this Board. The third lot consists of 27 acres and is being considered under an option by the purchaser of the other two lots. The option price per acre is

\$2,443 for this lot. All three lots contain enough ground outside the floodplain to provide building sites, according to Mr. Hepp.

In response to questioning by this Board, Mr. Hepp testified that the above-discussed negotiated prices were obtained through "a lot of conferring with the realtors and also just independent research on my own as a matter of keeping ears and eyes open, talking to people who have sold property."

Mr. Wordal stated that he considers the Hepp negotiations concerning the Buffalo Jump Golf Course, while they did not come to fruition, to be the best indication of value to be found for raw land value in the flood plain that could accommodate a golf course project.

DOR'S CONTENTIONS

DOR Exhibit B is a three page exhibit showing the CALP (computer-assisted land pricing) tables that were used to value the Woodland Estates interior and exterior lots. The third page of this exhibit contains a summary of the sales used to value the subject property. Using sales data from Neighborhoods 62D (Woodland Estates) and 62I (Woodland Estates Interior), the DOR determined a base rate of \$9,400 per acre for Neighborhood 62I (which the DOR characterized as "dry" or interior land) and \$17,000 per acre for Neighborhood 62D (which the DOR characterized as "wet" or riverfront land). These two base rates were averaged to obtain a value of \$13,200 an acre since the subject property contains both

riverfront (wet) and interior (dry) lots. The \$13,200 value was reduced by approximately 47 percent in an attempt to recognize the size difference between the subject 120 acres and the sizes of the parcels (one to one and a half acre) whose sales prices determined the subject value. Upon questioning by the Board, Mr. Dempsey testified that he arrived at the 47 percent reduction through "my knowledge that the more you buy, the less you pay for it. . .it was just what I chose. . . it's been my knowledge when we worked at the Department of Revenue that the more that you buy the less you pay for it and I used that and applied the value."

The DOR also relied upon sales of residential properties on nearby Alder Drive. Mr. Fontana performed a regression analysis on that sales data, extracted the improvement value, and arrived at a value of \$5,700 per lot. These lots were 10,000 square feet in size.

DOR Exhibit C is a copy of a realty transfer certificate describing the transaction details of the July 26, 1995 exchange of a vacant 18.5 acre commercial lot, located outside the Great Falls city limits, for \$850,000. It was annexed into the city subsequent to the sale. This parcel is not located within a floodplain and does not have water amenities. The DOR testimony was that it offered this exhibit because it involved a large vacant land sale, outside the city limits, similar to the evidence presented by the taxpayer in support of its arguments.

DOR Exhibit D is a copy of a realty transfer certificate describing the transaction details of a December 29, 1995 exchange of a parcel located on Meadowlark Boulevard "just down the street" from the subject property. This 100' by 100' (10,000 square foot) vacant land parcel sold for \$202,900, but that sale consisted of an old service station structure which necessitated removal of underground fuel tanks at a cost of \$16,000. Therefore, the sales price was reduced by \$16,000 to arrive at \$186,900. The DOR testimony was that this property would be subject to the same flood plain conditions as the subject property. Mr. Dempsey stated that this sale demonstrated that commercial property along 10th Avenue South and Fox Farm Road does not carry a market value of \$4,000 per acre (the value requested by the taxpayer).

A post-hearing submission was received by the DOR on October 14, 1999. This document is a copy of a realty transfer certificate concerning the transaction details of the July 1, 1996 exchange of an 83.0561 acre parcel for \$3,250,000. This sale was of two vacant commercial lots located outside the city limits of Great Falls. The property was annexed into the city subsequent to the sale. The cover letter for this submission, signed by Richard Dempsey, offers the opinion that this sale and the sale described in DOR Exhibit B "best demonstrates the value of commercial land in the Great Falls area." Again, Mr. Dempsey stated that this evidence was offered because it involved a large vacant land sale, outside

the city limits, which was annexed into the city limits after the sale.

Mr. Dempsey referred to a map of the Country Club addition to Great Falls depicting sales of homes in the area of the Meadowlark Country Club in an effort to demonstrate that sales do occur in the floodplain despite floodplain restrictions. Mr. Fontana referenced the sale of a vacant lot on the end of the golf course at \$50,000.

BOARD DISCUSSION

The Board finds merit in the taxpayer's contention that the DOR's use of sales of residential properties ranging in size from 1.120 to 2.865 acres to value a 120 acre commercial property is inappropriate. Further, the record contains no substantial and credible sales evidence to support the 47 percent reduction afforded by the DOR in attempt to recognize the size difference between the "comparable" properties and the subject. Mr. Fontana, in response to a question by this Board, acknowledged that the DOR would expect supporting documentation concerning such a percentage reduction should a similar claim be made by a taxpayer. And Mr. Dempsey, in his closing statement, admitted "I submit that maybe I didn't do the best, or our office didn't do the best, in arriving at a value for the subject property..."

In the absence of supporting documentation in the form of concrete sales data, however, this Board wonders whether the 47

percent reduction may have been too generous, or perhaps not enough.

With the vast difference in parcel size and the questionable nature of the percentage reduction afforded in an attempt to recognize those size differences, the resulting DOR value of \$7,500 per acre comes under scrutiny. The following table illustrates the sales presented to the Board:

Sale #	Property	Sale Price	Size (acres)	Price Per Acre
1	Hepp/Buffalo Jump	\$720,000	360	\$2,000
2	Hepp/subdivision	\$175,500	111.6	\$1,573
3	Hepp/option	\$66,000	27	\$2,443
4	Crescent Hgts.	\$240,000	58.85	\$4,078
5	Beebe Tracts	\$139,500	27.631	\$5,049
6	WalMart	\$850,000	18.5	\$45,946
7	Macerich	\$3,250,000	83.0561	\$39,130

In the Board's view, the subject property is superior to the Hepp properties, primarily in terms of location. The subject property enjoys 10th Avenue South access and Missouri River influence. The Hepp properties are more rural in nature and the Sun River lacks the aesthetic influence of the Missouri. The subject property is also superior to the Crescent Heights and the Beebe Tracts properties, again, in terms of access and river influence. These opinions would point to a market value in excess of the highest sales price above (approximately \$5,000 per acre for the Beebe Tracts property).

The Board does not consider the WalMart sale to be comparable to the subject in terms of size, usage, or location.

While comparable to the subject in certain respects; i.e., annexation into the city limits subsequent to the sale and size of the parcel, the Macerich property sale points to a value substantially above the appraised value of the subject.

The Board is faced with the dilemma of unconvincing comparable sales data from both parties. It might have been helpful had the taxpayer seen fit to present the fee appraisal performed when the country club was undergoing a remodel. The hearing before this Board contained some discussion of this appraisal. Mr. Wordal stated that he felt the fee appraisal was irrelevant due to the fact that the improvement value was not in contention. ARM 42.20.455 provides for consideration of independent appraisals as an indication of market value: "(1) When considering any objection to the appraisal of property, the department may consider independent appraisals of the property as evidence of the market value of the property. . ."

It might also have been helpful had the Board been presented with the appraisal information regarding similarly situated golf courses in Missoula, Billings, Bozeman, etc., as an analysis of equity in property appraisal statewide.

The burden of proof in this appeal lies with the taxpayer. The Board finds no substantial and credible evidence in the record to support the claim that the ad valorem market value of the subject property is \$4,000 per acre. The Board also finds the DOR

appraisal lacking in terms of true comparability and lack of supporting documentation for its percentage reduction of 47 percent to account for comparability differences. On the horns of a dilemma, the Board will uphold the DOR appraised value of \$7,500 per acre due to lack of concrete evidence to the contrary presented by the taxpayer.

The appeal of the taxpayer is denied and the decision of the Cascade County Tax Appeal Board is affirmed.

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. **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.

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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 Cascade County by the Assessor of that county at the 1997 tax year value of \$900,000, as determined by the Department of Revenue and affirmed by the Cascade County Tax Appeal Board.

Dated this 16th of December, 1999.

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 16th day of December, 1999, 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:

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