

BEFORE THE STATE TAX APPEAL BOARD  
OF THE STATE OF MONTANA

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MOSS FAMILY TRUST,	)	
	)	DOCKET NO.: PT-2009-77
Appellant,	)	
	)	
vs.	)	FACTUAL BACKGROUND,
	)	CONCLUSIONS OF LAW,
	)	ORDER, & OPPORTUNITY
THE DEPARTMENT OF REVENUE	)	FOR JUDICIAL REVIEW
OF THE STATE OF MONTANA,	)	
	)	
Respondent.	)	

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**Statement of Case**

The Moss Family Trust (Taxpayer) brought this appeal contesting the valuations placed on their land by the Department of Revenue (DOR) and the Missoula County Tax Appeal Board (CTAB). The property is located at 25976 Vanderburg Lane in Arlee, Section 30, Township 16 N, Range 19 W, Plat N4, Parcel 009, Tract 9 Deed Exhibit 2798 SW4 NW4 Plat N4 30-16-19 10.19AC. Taxpayer was represented in the matter by Martin Moss and the DOR was represented by Bonnie Saxton, Residential Appraiser; Rocky Haralson, Area Manager; and Michele Crepeau, Tax Counsel. A telephonic hearing was held before this Board on September 7, 2010.

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 determine an appropriate market value for the subject property for tax year 2009?

## Summary

Taxpayers are the appellants in this hearing and therefore bear the burden of proof. Based on a preponderance of the evidence, the Board modifies the holding of the Missoula CTAB.

## 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. Taxpayer's property is 10.19 acres of rural land with a house, cabin and two other buildings, valued at \$111,307 for the land and \$175,221 for the buildings, for a total of \$286,528 (Exh. A, Property Record Card).
3. Taxpayer requests a 30% reduction in the total value assigned by the DOR, to \$200,000, because he does not have an enforceable right of access to his property. (Letter to the Board, Aug. 28, 2010.)
4. Taxpayer's land is one of eleven parcels accessible by a road that has existed for at least 95 years (Tr. p.4) which crosses through private lands and land owned by the Salish and Kootenai Tribal Government.
5. When a neighbor attempted to sell his land in 2009, it was discovered that there was no legal access and the land was sold with owner financing, so no outside lender was involved and no title insurance was required. (CTAB Tr. p.11.)

6. Taxpayer filed a claim with his own title insurance company, Old Republic. (Moss Testimony.) Taxpayer's attorney and the title insurance company were unable to resolve the access issue with the property owners. Though the road has been there for many decades, the law does not allow a prescriptive easement against a sovereign entity such as the Salish and Kootenai Tribal Government. (CTAB Decision.)
7. The title insurance company concluded that "the failure of access may drastically reduce the value of your land" and paid the Taxpayer the full amount of the purchase price of the land, \$62,000. (Exh. G, Letter from Old Republic, May 14, 2009.)
8. Taxpayer and several neighbors explored an alternative access route through private property. The estimated cost would be \$200,000 for access (Tr. p. 5.) and \$513,336 (CTAB Exh. 1.) to build the road, a total of \$713,336, a cost to each of the 11 landowners of \$64,849. Taxpayer asserts that this cost is beyond the means of the landowners in that area and points out that he has no ability to force this solution on the rest of the property owners if he wished to sell his property.
9. DOR appraiser Bonnie Saxton testified that she had made inquiries when the Taxpayer and his neighbors filed their AB-26 forms. (Tr. pp.15, 16) She called title insurance companies and banks to see if they would insure and mortgage property with no legal access. The insurers said they would write a policy with an access exemption. The nationally based lender said, in one case, they would not consider it and two locally based lenders would consider it. Saxton then stated that as the road had not been closed she denied all the AB-26 appeals. (Saxton Testimony.)

10. At the CTAB hearing, appraiser Wes Redden submitted into evidence the computer assisted land pricing (CALP) model on which the valuation was based. (Exh D.) Though none of those properties lacked legal access, he stated that the payment by the insurance company to Taxpayer meant that he had the land “for free.” He pointed out that title insurance was available although it would not cover the access issue. (Redden Testimony.)
11. Taxpayer does not dispute the correctness of the DOR calculations but appealed to the Missoula CTAB on June 21, 2010 stating: “No legal access to the property (*sic*) Value down another 20%.” Taxpayer requested a value of \$200,000 for land and buildings. (Appeal Form.)
12. The Missoula CTAB concluded that the lack of legal access diminished the value of the land and that the value should be reduced by the cost of the “cure” of \$64,849. As the Taxpayer had already received an insurance payment that compensated him for his land, the CTAB determined that the value of the land should not be diminished below \$50,000, for a total appraised value of \$225,221. (Missoula CTAB decision.)
13. Taxpayer appealed to this Board, stating that the issue was solely the “lack of legal access and its effect.” (Aug. 28, 2010 Letter from Taxpayer.)

### **Principles of Law**

1. The State Tax Appeal Board has jurisdiction over this matter. (§15-2-301, MCA.)
2. All taxable property must be assessed at 100% of its market value except as otherwise provided. (§15-8-111, MCA.)

## **Board Findings and Conclusions**

The Taxpayer is the appellant in this case and therefore bears the burden of proof. While the Taxpayer has submitted no evidence to support his request for a 30 percent reduction in the value of the property, it is also true that none of the “comparable” properties used by the DOR to set the value were actually comparable to the subject property as none of them lacked legal access.

The Board finds that the lack of legal access results in a substantial diminution of value. The task of the DOR is to value property at its fair market value, that is, what a willing buyer would pay a willing seller if neither were under any compulsion and both had reasonable knowledge of the facts. (§15-8-111(2)(a)).

The fact that the Taxpayer has received compensation from his insurance company has no bearing on market value of the property. Nor does the fact that the access road has not yet been closed by the adjacent property owners, who have the right to close it whenever they wish, change the market value of landlocked property. Whether such land would qualify for a mortgage was not settled by the evidence, but the insurance companies would certainly not insure access to the property, making bank participation very unlikely.

The possibility of ensuring an alternative access road would be costly to all concerned and we agree the Taxpayer alone does not have the authority to demand his neighbors share that expense. The Taxpayer, therefore, has made reasonable efforts to remedy the problem but has been unsuccessful.

We do not fault the DOR for failing to find comparable properties as there probably are none during the relevant time-frame. The neighboring property sale occurred in 2009, after the lien date, and cannot be considered as evidence of value. We similarly cannot fault the Taxpayer for failing to submit data supporting the

request for a 30 percent reduction in value. We cannot, however, endorse a valuation based on the sale prices of accessible properties when they are not comparable to a property with no legal access.

This Board finds that the request for reduction by 30 percent is a reasonable accommodation for the problem and concludes that the value should be reduced to \$200,000, with the land valued at \$50,000 and the buildings valued at \$150,000.

**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 Missoula County at a 2009 tax year value of \$200,000. The decision of the Missoula County Tax Appeal Board is modified.

Dated this 21st of September, 2010.

BY ORDER OF THE  
STATE TAX APPEAL BOARD

/s/ \_\_\_\_\_  
KAREN E. POWELL, Chairwoman

/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 this Order.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 21st day of September, 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:

Moss Family Trust  
P.O. Box 121  
Arlee, MT 59821

U.S. Mail, Postage Prepaid  
 Hand Delivered  
 E-mail

Missoula County Appraisal Office  
2681 Palmer St., Ste. I  
Missoula, MT 59808

U.S. Mail, Postage Prepaid  
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 Interoffice

Michelle R. Crepeau  
Office of Legal Affairs  
Department of Revenue  
Mitchell Building  
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U.S. Mail, Postage Prepaid  
 Hand Delivered  
 E-Mail  
 Interoffice

Cindie Aplin, Secretary  
Missoula County Tax Appeal Board  
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U.S. Mail, Postage Prepaid  
 Hand Delievered  
 E-Mail

/s/ \_\_\_\_\_  
DONNA EUBANK  
Paralegal

