

BEFORE THE STATE TAX APPEAL BOARD
OF THE STATE OF MONTANA

OKKEN FAMILY TRUST,)	
)	DOCKET NO.: PT-2009-39
Appellants,)	
-vs-)	FACTUAL BACKGROUND,
)	CONCLUSIONS OF LAW,
THE DEPARTMENT OF REVENUE)	ORDER and OPPORTUNITY
OF THE STATE OF MONTANA,)	FOR JUDICIAL REVIEW
)	
Respondent.)	

The Okken Family Trust (Taxpayer) appealed a decision of the Carbon County Tax Appeal Board (CTAB) affirming the Department of Revenue's (DOR's) value of a parcel of land known as Western Ranch Estates Unit 1 013, S05, T06 S, R21 E, Western Ranch Estates Unit 2 LT 1 COS 716, geocode 10 0447 05 202 09 0000. Taxpayer argues that the land was overvalued by the DOR and seeks a reduction in value. At the State Tax Appeal Board hearing, held telephonically on May 19, 2010, Taxpayer was represented by Mari Okken, current user of the trust property, and the DOR was represented by Brent Coleman, Tax Counsel, Kathryn Smiley, Appraiser, and Kris Todd, Area Manager.

The Board 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

The Okken Family Trust is the Taxpayer in this proceeding and therefore bears the burden of proof. Based on a preponderance of the evidence, this Board modifies the value set by the DOR.

Facts

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 Taxpayer's land is 3.44 acres of recreational land located on Rock Creek in Carbon County which was valued at \$115,421 for tax year 2009. Taxpayer requests a value of \$30,000. The only building on the land is a small shelter or shed valued at \$4,591 and not disputed by the Taxpayer.
3. Taxpayer requested an informal review with the DOR stating "Do not agree with the increased value (per attached)." The attached sheet stated, in sum, that the land is recreational, useful for camping, is in a flood plain, the back of the property is a hill, and a public road borders all of the subject property. The building is not finished, but is just a shelter to get out of the weather. Sanitation is a port a potty. Taxpayer argued the value increase of over 600% is way out of range according to realtors. (Form AB -26, submitted as part of Taxpayer's Exh 1 to CTAB.)
4. The DOR reaffirmed its valuation and Taxpayer filed a timely review with the Carbon County Tax Appeal Board. Her appeal stated: "VALUES DETERMINED IN AREA PER 2009 CARBON COUNTY LAND REPORT. THE APPRAISED VALUE COULD NOT SELL. THIS VALUE APPRAISED MUCH TOO HIGH. . . PROPERTY IS RECREATIONAL – VACATION ONLY. . . MY INCOME IS FIXED,

RETIRED. THIS PUTS A HARDSHIP ON ME.” (Property Tax Appeal Form.)

5. The CTAB disapproved Ms. Okken’s appeal on the grounds of lack of evidence to prove the property was over-valued in July 2008. (March 18, 2010 decision from CTAB.)
6. Taxpayer timely filed an appeal with this Board stating “SOLD PROPERTY IN AREA ARE CONSIDERABLE (*sic*) LOWER PRICED. THE BOARD WAS BIAS(*sic*). NOT PROVEN WITH COMPARIBLE (*sic*) SALES IN AREA FOR TAX PURPOSES. I FEEL THIS TRACT #1 IS OVER VALUED.” (Appeal form.)
7. This Board heard the case telephonically on May 19, 2010. Taxpayer testified that the land has very limited use due to the flooding that frequently occurs and the expense of repairing flood damage. The land does not have a sanitary permit or a well or drain field and is subject to building restrictions. (Okken test.)
8. The land is part of the Western Ranch Estates development and is subject to a variety of restrictions. All buildings, fences or modifications to the land have to be approved by an architectural committee. The river bank cannot be modified or improved without approval of both the Board of Directors and the Carbon County Conservation District. The land or buildings cannot be rented, cannot be used to store vehicles, propane tanks must be screened from view and quiet hours are to be observed from 8 p.m. to 8 a.m. A \$425 membership fee is assessed each year to maintain roads and bridges. (Declaration of Covenants, Conditions and Restrictions, Western Ranch Estates Unit II, Version 0.4, 2009, submitted post-hearing.)

9. Taxpayer testified to the low prices and infrequency of sales in the Western Ranch Estates and cited current real estate appraisals to argue the land is only worth \$30,000.
10. The DOR appraiser Kathryn Smiley explained the valuation process that had been used on the Taxpayer's land. The DOR, using a computer assisted land pricing model (CALP), looked at 70 sales of vacant land in the vicinity of Taxpayer's land (Neighborhood 003) and time-adjusted those sales prices to the statutory appraisal date of July 1, 2008. (Smiley test.)
11. To assure uniformity and equality in valuation, all property in Montana is appraised on the same date. *See* §§15-8-201, 15-7-103, MCA.
12. The CALP model calculated a value for the subject property as of July 1, 2008 at \$51,000 for the first acre (base rate) and \$1,100 per acre beyond the first acre, producing an initial value of \$53,684 for Taxpayer's 3.44 acres. (DOR Exh. D.)
13. In addition to the value set by the CALP, Smiley calculated an "influence factor" which is used to distinguish land with high-value qualities, such as lake or river frontage, from land without those qualities. The influence factor she calculated at 243%, but she noted "Western Ranch 2 lots come in about 90% lower than other lots in the 003 model. Adding those sales here lowers the creekfront influence to 215%." (Smiley test., DOR Exh E.)
14. Smiley testified that she didn't regard the 90% lower prices as significant and said she averaged them into the influence factor model in order to reduce the Western Ranch influence factor to 215%. This increased the value of Taxpayer's land from \$53,684 to \$115,421. (Smiley test.)
15. Six of the 18 lots used in the influence analysis were Western Ranch II lots and two of those six were not actually creek-front. (Smiley test.) The four creek-front lots sold for a time-adjusted average of \$49,090 while the non-creekfront

property sold for an adjusted average of \$55,152, indicating that creek frontage was not an advantage. (DOR Exh. G, E.)

16. Smiley testified that off-creek lots did not have the same sanitary restrictions and were therefore buildable lots. (Smiley test.)

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.)
3. 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.)

Board Discussion and Conclusions of Law

As a general rule, the Taxpayer who seeks a reduction in the valuation of property bears the burden of proof, and the DOR valuation is presumed correct unless shown otherwise. In this case, however, the DOR's own data suggests adding an "influence factor" of \$61,737 to the subject property is inappropriate. The subject property is in Western Ranch lots, and is being valued by comparison to waterfront property outside Western Ranch lots. FOF 13.

The inapplicability of the influence factor in this instance is borne out by comparing the sales from the CALP and the influence factor calculations. The Western Ranch lots were not selling in the same price category as other waterfront land and were, in fact, 90% lower than other properties. FOF 13.

Despite this evidence, the DOR applied an influence factor to the property, regarding the valuation discrepancy as insignificant.

This Board considers a 90% discrepancy in valuation of “comparable” properties as significant. It suggests to us that not all creek-side land shares the same high-value qualities that justify the use of an influence factor and the factor should not be automatically applied. This is supported by testimony and evidence that indicated the Western Ranch lots did not command as high a price nor were as desirable as the other lots. Additionally, the Western Ranch lots are generally smaller and have considerable building restrictions. Smiley, Okken test., FOF 13 and DOR Exh. E.

The evidence of sales of the Western Ranch II lots is not extensive: only six sales since the last appraisal cycle. FOF 15. Though the evidence is slim, it does suggest off-creek property actually sells for a higher price than on-creek property, which makes the application of an influence factor to the Taxpayer’s land even more dubious.

Based on the evidence presented, it is likely the additional annual fees, frequent flooding and the restrictive covenants all contribute to lower prices for this property. FOF 7 and 8.

We conclude that the influence factor should not have been applied and the value of the land be set at the \$53,684 derived from the CALP’s time-adjusted sale prices.

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 Carbon County at a 2009 tax year value of \$53,684. The decision of the Carbon County Tax Appeal Board is modified.

Dated this 18th of June, 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 18th day of June, 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:

Mari Okken U.S. Mail, Postage Prepaid
2136 Harmon Lane Hand Delivered
Billings, MT 59501 E-mail

Kris Todd U.S. Mail, Postage Prepaid
Kathryn Smiley Hand Delivered
Carbon County Appraisal Office E-Mail
PO Box 647 Interoffice
Red Lodge, MT 59523

Brent Coleman U.S. Mail, Postage Prepaid
Office of Legal Affairs Hand Delivered
Department of Revenue E-Mail
Mitchell Building Interoffice
Helena, MT 596702

Lori Kane, Secretary U.S. Mail, Postage Prepaid
Carbon County Tax Appeal Board Hand Delievered
PO Box 116 E-Mail
Red Lodge, MT 59068

/a/ _____

DONNA EUBANK

Paralegal