

BEFORE THE STATE TAX APPEAL BOARD
OF THE STATE OF MONTANA

THE DEPARTMENT OF REVENUE)	
OF THE STATE OF MONTANA)	
)	DOCKET NO.: PT-2003-55
Appellant,)	
)	
-vs-)	
)	
ROGER A. PEDERSEN)	FACTUAL BACKGROUND,
)	CONCLUSIONS OF LAW,
)	ORDER and OPPORTUNITY
)	<u>FOR JUDICIAL REVIEW</u>
Respondent.)	

The above-entitled appeal was heard on July 26, 2004 in the City of Helena, 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 Appellant, Department of Revenue (DOR), initiated this appeal from a decision of the Lewis and Clark County Tax Appeal Board. At the hearing before this Board, the Department of Revenue was represented by Tracie Grimm, appraiser, and Rocky Haralson, Area Manager. Roger Pedersen, the Respondent in this appeal, appeared on his behalf. Testimony was presented and exhibits were received from both parties. The Board allowed the record to remain open for a period of time for the purpose of receiving post-hearing submissions from both parties. Having received said post-hearing submissions in a timely manner, the Board then took the appeal

under advisement; and the Board having fully considered the testimony, exhibits and all things and matters presented to it by the parties, finds and concludes that the value most indicative of market for the subject property is \$38,128.

FACTUAL BACKGROUND

1. The taxpayer is the owner of the subject property which is described as follows:

Land only, Tract 3B-1, comprised of 6.56 acres in Section 15, Township 10 North, Range 1 West, Sheriff Estates, West Shore of Canyon Ferry Lake, County of Lewis and Clark, State of Montana (Assessor ID: 24369).

2. For tax year 2003, the DOR appraised the subject land at \$46,859. At the hearing before this Board, the DOR amended that value to \$40,551.

3. The taxpayer appealed that appraisal to the Lewis and Clark County Tax Appeal Board on September 30, 2003, requesting a value of \$15,720, citing the following reason for appeal:

The 2002 value was \$13,681. The revised 2003 value is \$46,859! This is an increase of 343%! Where are you getting your information? This far exceeds the market value of the property and is 3 to 4 times more than other close properties. In addition, previous appraisers reduced values an additional 52% because of access and terrain problems.

4. In its December 12, 2003 decision, the county reduced the land value to \$23,100, stating:

From the evidence, it appears the land is valued at \$3,500 per acre.

5. The DOR then appealed that decision to this Board on January 8, 2004, citing the following reason for appeal:

The nature of the proof adduced at the hearing was insufficient, from a factual and a legal standpoint, to support the Board's decision.

DOR'S CONTENTIONS

The first acre in the subject neighborhood is valued at \$64,000 with residual acreage valued at \$4,700, based upon an analysis of land sales. (DOR Exhibits G and H). Mr. Haralson testified that influence codes, discussed below, were applied due to location: "For whatever reason, in this subdivision or small pocket or area, is selling for less than other similar subdivisions. The sales indicate that. . . we needed to address problems in this subdivision." Topography was also a factor in determining the influence factors.

Ms. Grimm offered DOR Exhibit A, a copy of the subject's property record card. In August of 2001, the property ownership was split and the taxpayer's daughter, Heather Pedersen, assumed ownership of 10.055 acres (Tract 3B-2). A certificate of survey showing the configuration of the lots after this split was offered by the DOR. (Exhibit C). The appraisal of Tract 3B-2 is also under appeal before this Board and will be addressed in a separate decision (Department of Revenue v. Heather Pedersen, PT-2003-50).

Pursuant to the filing of an AB 26 form for property review,

it was discovered that an erroneous assessment had been sent to Mr. Pedersen. Both parcels, Roger's and Heather's, should have been given a 50 percent reduction in value due to possible access and terrain problems. (Taxpayer's Exhibit 5). This reduction was applied to both pieces of property. The DOR explained that, after the property was split, the market value was increased, because its market data as shown that as properties decrease in size, the market value increases.

The 50 percent reduction stayed on the subject appraisal until tax year 2002, when the influence factor was removed due to the reappraisal cycle.

On August 20, 2003, Mr. Pedersen filed another AB 26 form for property review for both properties. Mr. Pedersen disputed the land value only for the 2003 requests for property review. Mr. Pedersen stated that both parcels have access problems and that Heather's property is mostly unbuildable due to the amount of bedrock present.

Ms. Grimm testified that the appraisal of all of the lots in the subject area have had influence codes placed upon them. At the time of the Pedersen filings of property review requests, all of the larger (10-20 acres) lots had influence factors. The DOR did not apply such factors to the smaller lot appraisals. However, the 50 percent influence factor was erroneously applied to both the Pedersen lots, even though Mr. Pedersen's lot is less than ten acres in size. At that present time, both lot appraisals have a 52

percent influence code adjustment.

These lots are located within large neighborhoods. Ms. Grimm explained that influence factors recognize the characteristics of individual parcels, such as location within a flood plain, lake frontage, view, limited access, size and topography. Influence factors are established from analysis of vacant or abstracted land sales within the same neighborhood. After establishing the base values for a neighborhood, the DOR can further refine the individual parcel values by applying this influence factor.

The county tax appeal board reduced the subject lot value to \$23,100 from \$46,859. The county board simply indicted that the land should be valued at \$3,500 per acre.

Since the time of the county board hearing, the DOR has had the opportunity to examine more recent vacant land sales in the subject neighborhood. After an analysis of sales of smaller lots in this area, the DOR determined that an influence factor of 45 percent would be more appropriate. This influence factor will be applied to the subject parcel's assessment, lowering it from \$45,859 to \$40,551. (DOR Exhibit G).

DOR Exhibit H is a map showing the location and sales prices of the land sales used to determined the subject lot value.

DOR Exhibit I is a document entitled "Land Sales Comparison" and compares the subject appraisal with the sales date and appraised values of four lots deemed comparable to the subject by

the DOR. Summarized, this exhibit illustrates the following:

	Subject	Comp #1	Comp #2	Comp #3	Comp #4
Total Land Acreage	6.556	5.0	5.0	4.993	5.0
Appraised Value	\$40,551	\$37,260	\$37,260	\$37,245	\$37,260
Appraised Value/Unit Acreage	\$6,185	\$7,452	\$7,452	\$7,459	\$7,452
Sales Date		March 1, 2001	March 1, 1998	August 1, 1997	May 1, 2000
Sales Price		\$24,000	\$34,500	\$35,000	\$50,000

The sales used by the DOR in determining the subject appraisal (DOR Exhibits G and H) are summarized below. These lots are located in the Sheriff Estates Subdivision.

Lot size in acres	Sales date	Sales price
5.0	03/98	\$29,900
4.993	08/97	\$30,000
5.0	05/00	\$50,000
5.11	08/97	\$28,500*
5.11	02/01	\$20,000*
5.15	12/98	\$25,000
5.061	07/97	\$35,000
5.01	11/00	\$28,000

*denotes a paired sale: the same property sold twice.

The DOR summarized by stating that all of the land in the subject neighborhood has been similarly valued with the same influence codes applied.

TAXPAYER'S CONTENTIONS

The DOR's use of a base rate of \$64,000 for the first acre is inappropriate because there has never been a sale of one acre in the Sheriff Estates Subdivision. There are covenants present that prohibit the land from being subdivided any smaller than five

acres. Further, there hasn't been a sale of even a five or a ten-acre parcel in this subdivision that has ever sold for \$64,000. Only a few 20-acre parcels have sold for over \$64,000. The DOR's use of its computer-assisting land pricing model doesn't work for the Sheriff Estates subdivision.

Taxpayer's Exhibit 3 shows that Mr. Pedersen purchased the subject property (a total of 16.6 acres) in March of 1993 for \$19,000, or approximately \$1,145 per acre. For tax years 1993 through 1996, the DOR valued the subject land at \$14,372, or approximately \$866 per acre. For tax year 1997, the appraised value increased to \$14,762, or \$889 per acre. For tax year 1998, it decreased to \$14,475, or \$872 per acre. The influence factor of 50 percent was applied, resulting in a 1999 tax year value of \$12,678 (\$764 per acre). For tax year 2000, the appraised value decreased to \$12,098 (\$729 per acre). During 2000, Mr. Pedersen deeded 10.05 acres to his daughter, Heather Pedersen, leaving 6.55 acres for himself. On July 23, 2000, the Bucksnot fire burned 85 percent of the timber on the two parcels. The 2001 tax notice showed that the total valuation of both parcels increased, because of the property split, from \$12,098 to \$18,314 (a 50 percent increase). The 2002 tax notice showed that the market value of the subject property was \$9,439 and \$10,224 for Heather Pedersen's property, or a total of \$19,663.

In tax year 2003, the DOR value of the subject property increased from \$9,349 to \$90,113, or from \$1,430 to \$13,758 per

acre, almost a ten-fold increase. Heather Pedersen's property, that was valued at \$10,224, increased to \$55,411 (from \$1,022 to \$5,514 per acre). Pursuant to the filing of a request for property review (form AB 26), the subject property was reduced in value to \$46,859. As stated by the DOR, this value has been further reduced to \$40,551. Heather Pedersen's property valuation was unchanged after the DOR property review.

The Lewis and Clark County Tax Appeal further reduced the subject property to \$23,100 and Heather Pedersen's property to \$35,000.

Taxpayer's Exhibit 5 is a copy of an August 10, 2001 letter from the DOR regarding a property review request. No adjustment was made by the DOR, but the letter does state: "... the original land value was reduced by 50% by previous appraisers due to possible access and terrain problems. We will maintain this 50% reduction of value on both pieces of property until we have data that indicates these are no longer factors in the valuation of this property." Mr. Pedersen believes this statement means that the 50% reduction should remain on the valuation despite statewide reappraisal.

Taxpayer's Exhibit 6 is a copy on August 7, 2003 letter from the DOR stating that the subject appraisal, and that of Heather Pedersen's parcel, has received a 52% reduction and that sales data shows a steady increase in land value over the past six years.

Taxpayer's Exhibit 7 contains recent sales information

gathered by Mr. Pedersen, which is summarized below:

PROPERTY LOCATION	SALES DATE	SALES PRICE	PARCEL SIZE	SALES PRICE PER ACRE
Van Sheriff Heights Subdivision on Canyon Ferry Road	03/14/03	\$30,000	5.63 acres	\$5,329
Sheriff Estates Subdivision	05/07/02	\$29,900	5.00 acres	\$5,980
Sheriff Estates Subdivision	06/18/04	\$73,000	20.00 acres	\$3,650

Mr. Pedersen stated that the Van Sheriff Subdivision is very close to the Sheriff Estates Subdivision, across the road, was developed by the same developer, but with better access due to its proximity to a highway.

A recent listing in the Sheriff Estates Subdivision is a 23.95-acre parcel for \$80,000. If it sells for that amount, the per acre sales price would be \$3,340.

The average price per acre, from the above sales and listing, is \$5,655. Using the sales information from the DOR Exhibits G and H, the average per acre sales price is \$5,537.

Taxpayer-gathered and DOR sales information shows that the average per acre sales price of the smaller lots is \$5,600 before the application of any influence factors, and, for the larger sized lots ranging from ten to twenty acres in size, the average per acre sales price is \$3,500. "Just with the rough, layman's attempt to value the property out there, I'm saying, with no influence factors, small lot acreage, five or less, are worth \$5,600 an acre,

and large lots are worth \$3,400.” (Mr. Pedersen).

Due to the DOR statement in the letter identified as Taxpayer’s Exhibit 6 that the 50% reduction would stay with the land because of terrain and access problems, the large portions that are unbuildable, Mr. Pedersen stated that he would like to continue to receive the 50 percent in appraised value of both properties.

To arrive at his revised requested value for his lot, Mr. Pedersen has multiplied the \$5,600 an acre by his acreage, 6.55, which totals \$36,680 and then included the 50 percent influence factor he is requesting, for a total requested value of \$18,340. For Heather Pedersen’s revised requested value, Mr. Pedersen multiplied \$3,500 an acreage by her acreage, 10.05, which totals \$35,175 and then included the 50 percent influence factor reduction, for a total requested value of \$17,588. However, the Board advised him that, since he did not appeal the county tax appeal board values of \$3,500 per acre, the county board values are the ones before the Board in the present appeals.

A series of photographs of the subject property, and Heather Pedersen’s property, was presented in Taxpayer’s Exhibit 8, depicting the presence of numerous boulders, slopes, and ravines impacting much of the ability to build a structure, especially upon Heather Pedersen’s lot.

BOARD DISCUSSION

As a post-hearing submission, the Board asked the DOR to

provide the paired sales analysis that was used to develop its time adjustment and the location of those properties in relation to the subject lots. Also, additional clarification was sought on a particular paired sale and the RTC information for the sale of a five-acre lot for \$50,000 in May of 2000 was sought in response to the taxpayer's concern.

The taxpayer was given the opportunity to respond to the DOR submissions.

Having received both submissions in timely manner, and having analyzed the record, the Board finds that the value most indicative of market for the subject lot is \$38,128. An analysis of sales located within the subject subdivision, excluding the highest and lowest sales price, does not suggest that values are increasing.

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Sale Date	Sale Price	Lot Size (Acres)	\$/Acre	
Jul-97	\$35,000	5.061	\$6,916	
Aug-97	\$30,000	4.993	\$6,008	
Aug-97	\$28,500	5.110	\$5,577	Paired Sale
Mar-98	\$29,900	5.000	\$5,980	
Dec-98	\$25,000	5.150	\$4,854	
May-00	\$50,000	5.000	\$10,000	
Nov-00	\$28,000	5.010	\$5,589	
Feb-01	\$20,000	5.110	\$3,914	Paired Sale
Average	\$30,800	5.054	\$6,105	

Average - excluding the high & low	\$29,400	5.054	\$5,821
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The Board finds that the above analysis is a much stronger indication of the market value of the taxpayer's property than the use of a "base rate" of \$64,000 per acre and application of an "influence adjustment."

The Board will adopt a per acre value of \$5,821, as suggested by the above sales analysis, for the subject 6.55 acres, resulting in a 2003 market value of \$38,128.

CONCLUSIONS OF LAW

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

4. **§15-2-301** MCA, Appeal of county tax appeal board decisions,
(4)...The state tax appeal board shall give an administrative rule full effect unless the board finds a rule arbitrary, capricious, or otherwise unlawful.

5. The appeal of the Department of Revenue is hereby granted in part and denied in part and the decision of the Lewis and Clark County Tax Appeal Board is modified.

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ORDER

IT IS THEREFORE ORDERED by the State Tax Appeal Board of the State of Montana that the subject property land value shall be entered on the tax rolls of Lewis and Clark County by the local Department of Revenue office at a 2003 tax year value of \$38,128.

Dated this 26th day of August, 2004.

BY ORDER OF THE
STATE TAX APPEAL BOARD

GREGORY A. THORNQUIST, Chairman

JERE ANN 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 26th day of August, 2004, 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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