

BEFORE THE STATE TAX APPEAL BOARD

OF THE STATE OF MONTANA

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CHARLES F. ROMEE,	)	
	)	DOCKET NO.: PT-1997-30
Appellant,	)	
	)	
-vs-	)	
	)	
THE DEPARTMENT OF REVENUE	)	FINDINGS OF FACT,
OF THE STATE OF MONTANA,	)	CONCLUSIONS OF LAW,
	)	ORDER and OPPORTUNITY
Respondent.	)	<u>FOR JUDICIAL REVIEW</u>

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The above-entitled appeal came on regularly for hearing on the 5th day of August, 1998, in the City of Missoula, Montana, in accordance with an order of the State Tax Appeal Board of the State of Montana (the Board). The notice of the hearing was duly given as required by law. The taxpayer, represented by Glen A. Wohl, presented testimony in support of the appeal. The Department of Revenue (DOR), represented by Ronald Pierson, appraiser, and James Lennington, commercial appraiser, presented testimony in opposition to the appeal. Testimony was presented, exhibits were received including a requested post hearing from the DOR, and 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 all parties, finds and concludes as follows:

FINDINGS OF FACT

1. Due, proper and sufficient notice was given of this matter, the hearing hereon, and of the time and place of said hearing. All parties were afforded opportunity to present evidence, oral and documentary.

2. The taxpayer is the owner of the property which is the subject of this appeal and which is described as follows:

Land only, West One Half of Lot 8,  
and Frac of Lot 10, Seeley Lake Shoresites,  
Missoula County, Montana.

3. For the 1997 tax year, the DOR appraised the subject property at a value of \$84,550 for the land.

4. The taxpayer appealed to the Missoula County Tax Appeal Board requesting a reduction in value to \$59,758 for the land. The requested value was modified by Mr. Wohl at the hearing before this Board to \$57,750.

5. The county board denied the appeal.

6. The taxpayer then appealed that decision to this Board.

7. The DOR, through Mr. Jim Fairbanks, submitted a post hearing memorandum in a parallel appeal (PT-1997-26) concerning the basis used in the development of land valuation for the subject. The taxpayer did not respond to the Board concerning that memorandum.

8. The Board takes administrative notice of the testimony presented in WOHL V. DOR, PT-1997-26.

TAXPAYER'S CONTENTIONS

Mr. Wohl testified that this property has been appraised using a different dollar figure per lineal foot of lake front than other lots on the lake. The DOR utilizes a figure of \$1,050 per lineal foot of lake front footage according to taxpayer exhibit #3. Mr. Wohl assumed that the list of sales found on exhibit #3, which is a document created by the DOR and given to him at the local board hearing, is a listing of properties that are for sale. He submitted it only to show the per front foot figure of \$1,050 used by the DOR.

He stated that he could not find sales of lots on the surrounding lakes that were of property with less than 100 feet of lake front footage. He suggested that Seeley Lake was probably only 50% developed and that it is a mixture of fee owned land and leased properties. He knows of some developed properties that are currently for sale. He believes that some of the properties found on exhibit 3 are properties with improvements on them.

The taxpayer recognized that the DOR has adjusted the value of the subject lot through the DOR review process. That reduction he believes still does not come close to the actual value. The subject lot was created by a land split in

approximately 1970 according to Mr. Wohl. The other part of the original lot is also the subject of an appeal to this Board by the owner of that lot.(PT-1997-26)

He told the Board that the value of the improvements on a smaller lot is impacted by the amount of lake front footage. He believes because of that, the overall value indication is diminished. The subject property has a limited amount of lake front feet; therefore, it is less desirable than a similarly situated property with more lake front feet. His calculations show that the subject lot is being valued at \$500 more per front foot than that which the DOR is using on lots that have 100 feet, the standard, and actually the subject should be less than the standard.

The taxpayer provided exhibit #2, a document from Clearwater Realty demonstrating a sale of a lot on Salmon Lake.

The parcel is now being developed, and Mr. Wohl pointed out that the vacant land with 556 front feet sold for \$90,000 on December 31, 1997.

#### DOR's CONTENTIONS

The DOR provided the property record card for the subject property. (Ex A) Mr. Pierson stated that the DOR reduced the value of this lot "to appease the taxpayer." He was not aware of the reason used by the DOR in making the

adjustment even after examining the AB-26 form that he had (not submitted at the hearing) which was completed by Mr. Jim Fairbanks.

Mr. Pierson testified that the sales found in taxpayer's exhibit 3 are "without a doubt" bare land sales. He stated that there were no improvements located on these properties found in that exhibit at the time of the sale.

Mr. Pierson questioned the comparability of the land sale demonstrated on exhibit 2. He stated the lot shown on the exhibit is much steeper from the road to the lake than the subject property. He added that septic restrictions and buildable space on that lot make it not comparable to the subject.

#### BOARD'S DISCUSSION

Mr. Wohl presented a document (Ex 3) that was originally created by the DOR. His understanding of how that document applies to the valuation of his lot was limited. His appeal is based on a comparison of various lake front footage sizes with the idea that all lots should be valued using the \$1,050 per front foot that is indicated on exhibit 3. His response to questions by the Board did show that he understands the fact that lots with less lake front feet would not have the same value per lake front foot as those lots having more frontage on the lake.

The taxpayer requested documentation that the sales

listed on exhibit 3 were actually sales of vacant land. At the time of the hearing the representative of the DOR was convinced that it was made up of only vacant land sales. The DOR post hearing submission showed that in fact, of the twenty sales on the exhibit, ten were vacant land sales. The improvement values of the ten remaining sales were subtracted from the overall purchase price to arrive at a value for the land. It is from this documentation and sales history that the DOR developed its Computer Assisted Land Pricing (CALP) table. The base rate of one hundred feet was established by the fact that "All Seeley Lake Shoresites lots were surveyed as 100 foot frontages."(DOR post hearing) The adjustment rate, it follows, is also a product of the CALP model. A further modification is made depending on the depth of the lot, and the DOR considers that most of the value is found in the first two hundred feet of the lot. Any excess depth is valued by the acre at \$2,000 per acre.

Mr. Wohl went through the exercise of dividing the total land value of his lot and his neighbors lot by the lake front feet of each to arrive at the value indication of the DOR on a per front foot basis. Because the subject lot has less than 100 front feet the resulting number is higher than the \$1,050 dollar indication that the CALP model (Ex 3) shows is the value used per lake front foot. The value attributed to

the excess portion is also included in the overall value so, any mathematical division of the total value by the number of front feet does produce a higher number than what the front feet are actually valued at in this formula.

The property record card (Ex A) is not helpful in attempting to work through the pricing of the land in this case. It does identify the parcel as being valued first as if 55' X 200' but actually shows a "unit price" of \$1,663.64. Even if a reader of that exhibit thinks they have it understood at that point, the card is still even more confusing if one does as Mr. Wohl did, that is divide the next figure of \$82,350 by the 55 front feet. The product of that division is an indication of \$1,497 per front foot. Why? It can only be answered by the adjustment rate of \$300 per front foot.(Ex 3)

The calculation that must done is to first of all price the lot as a standard 100' X 200' parcel, multiply the 46' that are not there by the \$300 per foot adjustment rate and subtract that calculation from the standard lot figure; price the excess 55' X 850' (1.07 acres approx) at \$2,000 per acre and add that calculation to the now adjusted standard; and then apply the 10% reduction given by Mr. Fairbanks. No matter how you slice it, those are calculations that are not readily available from the property record card. And it is true that, if you attempt to divide the overall result by the number of

front feet, there does appear to be an exaggeration of the value of this lot in comparison to a neighbor who has the standard 100' of lake frontage.

The fact is, the same value per front foot was used initially in the valuation of this lot. Whether or not the adjustment rate applied by the DOR is justified was not addressed. It was not proven incorrect by the taxpayer nor, quite honestly, is it evident from the sales on exhibit #3. Only three of the sales found on that document are of lots with less than 100 feet, and then only slightly less. Furthermore, according to the post hearing DOR submittal, none of those lots (Ex 3, sales 4, 5, 6) were vacant at the time of the sale. This indicates that the same adjustment factor used on lots of over the standard 100' is used to price the lots of under 100' and must have been established from the sales of larger lots.

It is quite possible this is actually a benefit to the taxpayer since the value per front foot declines as the front footage becomes greater. One could argue with appraisal theory and postulate that they should be subtracted at the same value as that used to create the value of the first 100'. The fact remains that smaller parcels generally sell for more on a per unit of measurement basis than do large parcels.

It is the opinion of this Board that the taxpayer failed to prove that the value determined by the Department of



Revenue for the subject land is not the fair market value for the lot. The appeal is denied and the decision of the Missoula County Tax Appeal Board is affirmed.

CONCLUSIONS OF LAW

1. **15-8-111. Assessment - market value standard - exceptions.** (1) All taxable property must be assessed at 100% of its market value except as otherwise provided.

(2)(a) 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.

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 Missoula County by the assessor of that county at the 1997 tax year value of \$84,550 for the land as determined by the Department of Revenue.

Dated this 29th of October, 1998.

BY ORDER OF THE  
STATE TAX APPEAL BOARD

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PATRICK E. MCKELVEY, Chairman

( S E A L )

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GREGORY A. THORNQUIST, Member

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LINDA L. VAUGHEY, 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.