

BEFORE THE STATE TAX APPEAL BOARD
OF THE STATE OF MONTANA

KEITH & MARIE SWINGER,)	
Appellants,)	DOCKET NO.: PT-1997-162
)	
-vs-)	
)	
THE DEPARTMENT OF REVENUE)	FACTUAL BACKGROUND,
OF THE STATE OF MONTANA,)	CONCLUSIONS OF LAW,
)	ORDER and OPPORTUNITY
Respondent.)	<u>FOR JUDICIAL REVIEW</u>

The above-entitled appeal was heard on August 6, 1999, in the City of Polson, 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.

Larry G. Schuster, attorney, represented the taxpayers, Keith and Marie Swinger, who presented testimony in support of the appeal. The Department of Revenue was represented by Bruce McGinnis, tax counsel. Jackie Ladner, appraiser, and Scott Williams, regional manager, presented testimony in opposition to the appeal. Testimony was presented and exhibits were received. The parties were afforded the opportunity for post-hearing briefs. The Board then took the appeal under advisement; and the Board having fully considered the testimony, exhibits, post-hearing submissions and all things and matters presented to it by all parties, finds and concludes as follows:

FACTUAL BACKGROUND

1. The property which is the subject of this appeal is described as follows:
2. Government Lot 1, Tract 8, Admiral's Point, .49 acres in Section 12, Township 23 North, Range 20 West, County of Lake, State of Montana, and the improvements located thereon. Assessor Code 2993.
3. For the 1997 tax year, the DOR appraised the subject property at a value of \$148,380 for the land and \$68,920 for the improvements.
4. The taxpayers' appealed to the Lake County Tax Appeal Board on November 17, 1997, requesting a reduction in value to \$58,900 for the land and \$35,800 for the improvements.
5. In its May 6, 1998 decision, the county board denied the taxpayers' requested values, stating:
6. *While the appellants appear to have multiple and separate issues regarding property taxes, the DOR and the methods used to value property for tax purposes, and they have prepared extensive exhibits they believe support their appeal, the Board did not adjust the values determined by the DOR*
7. *The neighboring properties show a warranted reduction for topographical factors which do not need to be made for the appellant's property. Further, the condition of their cottage would appear to be adequately addressed in final value.*
8. *The Board's responsibility is to determine whether and by how much the appraised value has been inaccurately derived. It does not have the authority to make any decision regarding appraisals from other counties, discrepancies in property appraisals other than the appellants, the "freezing" of taxes or any of the other issues which the appellants feel have been used to treat them unfairly. The appellants are urged to address these points of contention with the departments, people, or legislators who may be able to help them.*

9. The taxpayer appealed that decision to this Board on October 12, 1998, stating in summary:

10. *Reasons are covered in our letter to Lake County appeal board dated May 4, 1994 and our letter to the State appeal board dated May 23, 1998. Cover letter is attached.*

TAXPAYERS' CONTENTIONS

Mr. Schuster's post-hearing brief and the record from the hearing before this Board addressed the issues that brought about the appeal of the DOR's market value determination:

A. The Computer Assisted Mass Appraisal System (CAMAS) throws the most comparable sale out of the tax valuation process.

Taxpayers' exhibit #3 is the DOR's "Montana Comparable Sales" that were selected by CAMAS to determine the market value for the subject property. Summarized this exhibit illustrates the following:

	Subject	Comp #1	Comp #2	Comp #3	Comp #4	Comp #5
Land Description						
Frontage	118	97	182	155	18	0
Depth	1	1	1	1	1	0
Land area (acres)	.49	1.00	4.42	.47	3.02	4.00
Dwelling Description						
Year built	1971	1963	1974	1978	1975	1979
Effective Age	1971	1963	1974	1978	1975	1979
Bedrooms	1	3	3	2	3	4
Bathrooms	1	2	2	1	2	2
Finished basement area (SF)	432		480		532	1,200
Grade	4-	5	6-	4	5	5
Condition/ Desirability/ Utility (CDU)	Good	Good	Good	Good	Good	Good
1 st floor area (square feet-SF)	1,280	1,295	1,208	672	1,316	1,200
2 nd Floor area (SF)				560		
Total living area SF)	1,280	1,295	1,208	1,232	1,316	1,200
Detached garage (SF)		988		480		
Porch (SF)		67	300			240
Pricing Data						

	Subject	Comp #1	Comp #2	Comp #3	Comp #4	Comp #5
RCN	\$65,250	\$78,690	\$98,400	\$53,160	\$97,090	\$101,160
Percent Good	80%	76%	82%	86%	82%	86%
RCNLD	\$61,070	\$69,970	\$94,410	\$53,490	\$93,140	\$101,790
Total OB&Y	\$880	\$10,470	\$6,450	\$7,570	\$4,720	\$3,470
Land value	\$148,380	\$132,600	\$174,273	\$157,459	\$51,240	\$52,200
Total Cost	\$210,330	\$213,040	\$275,133	\$218,519	\$149,10	\$157,460
Valuation						
Sale Date		1/95	10/95	1/95	10/94	9/95
Sale Price		\$195,000	\$295,000	\$195,000	\$149,000	\$155,000
MRA Estimate	\$218,658	\$214,438	\$266,471	\$214,382	\$147,912	\$152,402
Adjusted Sale		\$199,220	\$247,186	\$199,276	\$219,746	\$221,255
Comparability		72	108	111	117	121
Weighted Estimate	\$213,359					
Market Value	\$217,300					
Field Control Code Indicator	2					

The market value for the subject was derived by averaging the three middle values as illustrated below:

		<u>Comparability</u>
Adjusted Sale - Sale #2	\$247,186	108
Adjusted Sale - Sale #5	\$221,255	121
Adjusted Sale - Sale #4	\$219,746	117
MRA Estimate	\$218,658	
Weighted Estimate	\$213,359	
Adjusted Sale - Sale #3	\$199,276	111
Adjusted Sale - Sale #1	\$199,220	72

$$(\$213,359 + \$218,658 + \$219,746) / 3 = \$217,245$$

Comparability numbers are used as an indicator of comparability to the property being appraised. The lower the indicator, the more comparable the selected sales are to the property being appraised. The taxpayers contend the application used by the DOR to arrive at the market value is arbitrary when the most comparable property (sale #1) is discarded.

The taxpayers contend the DOR quality grade determination of 4 minus is an overstatement of the actual construction quality of the structure. It is the taxpayers' position that the quality of

construction, based on the usefulness of the structure, best meets the DOR quality grade description of 3. This conclusion is reached because the subject is a special use property; i.e., its construction quality is typical of a dwelling intended for only seasonal usage.

The taxpayers' contend the method the DOR has used to determine the land value is highly improper. The DOR values the property from sales of lakefront property and then adds an additional value for the site. This process constitutes a "double counting".

Base size	100 front feet
Base rate	\$1,100 per front foot
Base value	\$110,000
Additional frontage	18 front feet
Adjusted rate	\$800 per front foot
Additional value	\$ 14,400
Additional site value	\$ 23,980 (.49 acres)
Market Value	\$148,380

This double counting in the valuation process does not comply with 15-8-111 MCA, to value a property at 100% of market value.

The taxpayers dispute the DOR's theory that a buyer will pay more per front foot than for a smaller parcel than a buyer would pay for a larger parcel.

"Size is generally a less important element of comparison than date and location. Most types of development have an optimal site size; if the site is larger, the value of the excess land tends to decline at an acceleration rate. Because sales of different sizes may have different unit prices, appraisers ordinarily give more weight to comparables that are approximately the same size as the subject property."

The Appraisal of Real Estate American Institute of Real Estate Appraisers, 9th ed., Chapter 13 Land or Site Valuation pg. 302.

The taxpayers assert the DOR has selected land sales that are not comparable to the subject. Sale #1 is affected by easements, while sales #2 and #3 are much larger than the subject property. Four of the sales occurred in 1993, one in 1992 and one in 1994.

Adjacent properties' land values have been significantly reduced based on physical characteristics, i.e. topography, excessive frontage, etc. These reductions range from 25% to 50%, and were based on the judgement of the appraiser. The subject property has not been afforded these same considerations.

DOR'S CONTENTIONS

The subject property was appraised according to the ARM §42.18.106 and §42.18.109.

The DOR's computer assisted mass appraisal system (CAMAS) produces a comparable sale sheet for each residential property (exhibit #3). This exhibit illustrates the value indications from the cost and sales comparison approaches to value. The market value indication from the cost approach is \$210,330 and the value indication from the sale comparison approach is \$217,300. The DOR selected the value indication from the sales comparison as the final determination of value. The sales selected by CAMAS occurred within approximately a one-year period, between October 1994 and October 1995. These sales occurred within an acceptable timeframe. The statistical

indicators shown on exhibit #3 support the use of the sales comparison approach. The value indications from the cost and sales comparison approaches are within 10%, and a field control code indicator of 2 and comparability indicators are less than 150.

The DOR asserts the taxpayers have not presented credible evidence to suggest the DOR use of the sales comparison approach is invalid.

The DOR does not dispute that the Swingers draw water from Flathead Lake and this type of water system is functionally obsolete, but the taxpayers presented nothing to suggest that the value of the improvements have been adversely impacted. The DOR also acknowledges that the access to the property has seasonal restrictions. Again, however, the taxpayer presented no evidence in support of a negative impact on market value.

The Swinger property is located on Finley Point, and sales of vacant land from Finley Point were analyzed to develop the CALP model to establish the land values. The DOR also analyzed non-lake front land sales and applied an acreage value to the lake front value as previously addressed.

BOARD'S DISCUSSION

The DOR analyzed vacant land sales in determining the market value for the subject site. ARM 42.18.109 Residential Appraisal Plan, (6) Residential lots and tracts are valued through the use of computer assisted land pricing (CALP) models. Homogeneous areas within each county are geographically defined as

neighborhoods. The CALP models will reflect January 1, 1996.

The sales illustrated on exhibit C occurred during the years 1992, 1993 and 1994. The DOR rate of adjustment for time is 1.3832% per month to reflect a January 1, 1996 value. (exhibit C) Support for an adjustment for time can best be borne out in analyzing paired sales, the same piece of property that has sold more than once. DOR exhibit M, from the local board hearing, contains paired sales from Flathead Lake, Swan Lake and the Swan River. The Board will only consider those sales that have occurred on Flathead Lake. Summarized, these sales illustrate the following:

NBDH 300-7 EAST SHORE					
GEO CODE	SALE DATE	SALE PRICE	DIFFERENCE	MONTHS	% MONTH
3469	6/92	\$29,900	190.6%	49	1.85%
	7/96	\$52,000			
3581	2/92	\$32,500	200.0%	40	2.50%
	6/95	\$65,000			
3584	8/91	\$100,000	140.0%	25	1.60%
	9/93	\$140,000			
3708	4/92	\$25,000	200.0%	33	3.03%
	1/95	\$50,000			
3708	7/91	\$68,500	219.0%	56	2.13%
	3/96	\$158,000			
3469	10/91	\$74,491	134%	10	3.40
	8/92	\$100,000			

WOODS BAY AREA					
GEO CODE	SALE DATE	SALE PRICE	DIFFERENCE	MONTHS	% MONTH
3708-18	5/92	\$35,000	252.2%	27	5.64%
	7/94	\$88,270			
3708-20	11/91	\$33,000	236.4%	40	3.41%
	3/95	\$78,000			
3708-30	10/92	\$112,500	137.8%	20	1.89%
	6/94	\$155,000			
3708-30	8/92	\$150,000	150.0%	28	1.79%
	12/94	\$225,000			

NBDH 302-2 WEST SHORE POLSON					
GEO CODE	SALE DATE	SALE PRICE	DIFFERENCE	MONTHS	% MONTH
3350-21	5/92	\$120,000	154.1%	22	2.46%
	3/94	\$184,900			
3350-29	11/93	\$58,586	221.9%	9	13.54%
	8/94	\$130,000			
3350-29	9/92	\$107,500	139.5%	37	1.07
	10/95	\$150,000			

NBDH 300-2 PINewood SHORES					
GEO CODE	SALE DATE	SALE PRICE	DIFFERENCE	MONTHS	% MONTH
3550-16	11/90	\$72,500	186.2%	22	3.92%
	9/92	\$135,000	125.9%	30	0.86%
	6/95	\$170,000			

NBDH 300-1 WEST SHORE					
GEO CODE	SALE DATE	SALE PRICE	DIFFERENCE	MONTHS	% MONTH
3350-02	8/92	\$80,000	175.0%	49	1.53%
	9/96	\$140,000			
3350-03	4/91	\$49,500	202.0%	68	1.50%
	12/96	\$100,000			
3350-15	12/91	\$30,000	167.0%	13	5.15%
	9/93	\$50,000			
3468-34	7/92	\$69,900	243.2%	12	11.90%
	7/93	\$170,000			
3350-10	6/92	\$10,500	238.1%	14	9.80%
	8/93	\$25,000			
3467-10	3/92	\$19,500	189.7%	26	3.45%
	5/94	\$37,000			

The aforementioned paired sales data supports the DOR's monthly rate of change of 1.3832% per month.

The DOR's market value for the land is \$148,380 or \$1,257 per front foot. The time trended sales prices illustrated on exhibit C depict the following front foot values:

Exhibit C summarized						
	Sale #1	Sale #2	Sale #3	Sale #4	Sale #5	Sale #6
Monthly rate of change	1.3832%	1.3832%	1.3832%	1.3832%	1.3832%	1.3832%
# of months	25	25	15	25	25	44
Total % change	34.58%	34.58%	20.75%	34.58%	34.58%	60.86%
Sale price	\$42,500	\$140,000	\$247,000	\$105,000	\$115,000	\$140,000
Time trended sale price	\$57,197	\$188,412	\$298,248	\$141,309	\$154,767	\$225,205
Lake frontage	100	200	258	102	100	130
Adjusted sale price per front foot	\$572	\$942	\$1,156	\$1,385	\$1,548	\$1,732

Based solely on exhibit C, the market value indication for the subject property is \$124,400. (100 FF X \$1,100) + (18 FF X \$800) The DOR has added an additional \$23,980 based on non-lake shore sales. It is the Board's opinion that the non-lake shore sales should not even be considered in the valuation of lake front property, especially if it can be proven that adequate lake front sales data is available. The DOR has provided no evidence or testimony to support the additional site value of \$23,980.

The taxpayers argued that the subject site should warrant the same adjustments that have been applied to the neighboring properties, but nothing was presented to suggest the subject is impacted by the same terrain influences.

When the taxpayer's property is appraised at market value he cannot secure a reduction of his own assessment even if he is able to show that another taxpayer's property is under appraised. Patterson v. Department of Revenue, 171 Mont. 168, 557 P.2d 798 (1976).

And in no proceeding is one to be heard who complains of a valuation which, however erroneous it may be, charges him only with a just proportion of the tax. If his own assessment is not out of proportion, as compared with valuations generally on the same roll, it is immaterial that some one neighbor is assessed too little; and another to much. State ex. rel. Schoonover v. Stewart et. al., (1931) 89 Mont.257, 297 Pac. 476.

An element of the DOR's appraisal process is determining the Condition, Desirability and Utility (CDU) for a property being appraised. The DOR has determined a CDU as "good" for the subject property. *The Montana Appraisal Manual*, states:

47.4.1.1. CDU Rating System

As houses grow older, they wear out; they become less

desirable, less useful. This universal decline in value is called depreciation, and appraisers are required to determine the degree of this loss in each property they examine. If all houses deteriorated at the same rate, this decline in value would be a simple function of the age of the structure - a certain percentage per year. However, houses depreciate at varying rates depending on a number variables...

...Other houses lose value at lesser or more rapid rates. CDU ratings provide a means by which normal depreciation may be modified according to the appraiser's best determination of the relative loss of value in a structure, as compared with the average loss that might be expected. The age of a dwelling by itself is an unreliable indicator of the degree of depreciation from its cost new. For houses also depreciate because they wear out and become less desirable and less useful from a variety of causes.

To assist the appraisers in establishing the CDU rating of a building, a classification or rating scheme that follows the normal observation of an appraiser as building is examined has been developed. The following table lists the CDU ratings and their condition of the building and the degree of desirability and usefulness for the building age and type.

<u>CDU Rating of Dwelling</u>	<u>Definition</u>
UNSOUND	Dwelling is definitely unsound and practically unfit for use.
VERY POOR	Condition approached unsoundness; extremely undesirable and barely usable.
FAIR	Market deterioration; but quite usable; rather unattractive and undesirable
AVERAGE	Normal "wear and tear" is apparent; average attractiveness and desirability.
GOOD	Minor deterioration is visible; slightly more attractive, desirable and useful.
VERY GOOD	Slight evidence of deterioration; attractive and quite desirable.
EXCELLENT	Dwelling is in perfect condition; very attractive and highly desirable.

47.4.1.2. Age and CDU

...Condition represents a variable measure of the effects of

maintenance and remodeling on a building. *Desirability* is a measure of the degree of appeal a particular building may have to prospective purchasers. *Usefulness* is a measure of the utility value of the structure for the purpose for which is may be used...

...Once the CDU rating of a building has been established through consideration of its condition, desirability and usefulness for its age and its type, reference to the Dwelling Percent Good Table will indicate the appropriate value percent remaining for a structure possessing these qualities, in the degree observed and noted by the appraiser.

47.4.1.3. Selection of a Percent Good

1. Rate the dwelling in terms of its overall condition, desirability and usefulness, CDU.
2. From the following table, select the corresponding Percent Good based on the dwelling's observed age, either actual age or a calculated effective age, and the established CDU

The DOR's "Book of General Evidence" addresses the application of the CDU as follows:

C ondition
D esirability (location)
U tility

Each component shown above has the following CN Table entries:

Excellent	=	10	Fair	=	6
Very Good	=	9	Poor	=	5
Good	=	8	Very Poor	=	3
Average	=	7	Unsound	=	1

After extensive discussion in Area Manager meetings, it was decided that each component above should be weighted when determining CDU. The Condition and Utility components should each receive a weight of "1", while Desirability (location) should receive a weight of "2". Each component's numerical value should multiplied by it's weight and the total divided by 4. The resulting numerical number should be converted to the CDU rating.

EXAMPLE:

Condition	Excellent	=	10 x 1	=	10
Desirability	Average	=	7 x 2	=	14
Utility	Good	=	8 x 1	=	8
					32

$$\frac{32}{4} = 8 \text{ or GOOD CDU}$$

The DOR did not present evidence with respect to the

calculation of the subject property's CDU. It is the Board's opinion that the DOR has placed too much emphasis on the location of the subject property and too little emphasis on the condition and utility of the subject structure in the determination of the CDU.

The taxpayers dispute the DOR's quality of construction or quality grade determination of 4 minus. The 1997 Montana Appraisal Manual defines a grade 4 residence as "Fair Quality":

Residences are of fair quality construction built with average materials and workmanship. These houses will meet minimum building codes and construction requirements of lending institutions and mortgage insuring agencies. Exterior ornamentation is usually limited to the front elevation and with a minimum amount of inexpensive fenestration. These homes are usually designed from stock plans for speculative residential developments.

There is nothing to suggest that the DOR did not establish the proper quality grade. The taxpayer's argument of a reduced quality grade to grade 3 is denied.

The sales comparison approach to value is one method of establishing an indication of market value and is the method used by the DOR. The taxpayer contends the comparable properties selected by the DOR are not comparable. Very few properties have an exact substitute. Variations in location size, age, condition, amenities, etc. need to be identified and adjusted for. The Computer Assisted Mass Appraisal System (CAMAS) is developed to identify value-affecting departures from similarity and to compensate or adjust to close resemblance. CAMAS selected five properties that sold, and the sales prices were adjusted based on the differences to the subject.

The DOR's "Book of General Evidence" defines the various statistical indicators in the use of the sales comparison approach as follows:

FIELD CONTROL CODE

An indicator of variations among the adjusted sales.

1 - indicates less than 5%

2 - indicates 5% - 10%

3 - indicates 10% - 20%

4 - indicates more than 20%

The ratio used for the "Field Control Code" is the standard deviation of the adjusted sales to their average.

For the lower end of the market, indicators less than 4 are acceptable; for the middle and upper ends of the market, indicators less than 3 are expected although not always attainable when insufficient comparable sales exist. This indicator is valid only adjustments are moderate and sales are comparable.

For properties less than \$100,000... a field control code of 3 or less is considered reasonable.

For properties more than \$100,000... a field control code of 2 or less is considered reasonable.

Comparability

Generally: Under 100 is GOOD comparability
100 - 150 is ACCEPTABLE comparability
150 - 200 is MARGINALLY comparable
Over 200 is NON-Comparable

While it is the opinion of this Board that all indications support the DOR's proper application of the sales comparison approach, it would be unknown what value indication would be generated by CAMAS with the CDU for the subject property being reduced from "Good" to "Average". Therefore, the Board requested the DOR supply the Board with a revised "Montana Comparable Sales" (Board exhibit) to obtain what the resultant change in

value would be. As illustrated on the following page, the value indication for the property from the sales comparison approach is \$209,600, prior to an adjustment to the land value. The following illustrates the Board's calculation of the improvement value for the CDU adjustment:

DOR original land value (exhibit #3)	\$148,380
Less: Board's determination of land value	<u>\$124,400</u>
Land value reduction	\$ 23,980
Total property market value (exhibit #3)	\$217,300
Less: Total property market value (Board exhibit)	<u>\$209,600</u>
CDU adjustment	\$ 7,700
Market value prior to a land adjustment (Board exhibit)	\$209,600
Less: land adjustment	<u>\$ 23,980</u>
Total market value	\$185,620
Less: Board's determination of land value	<u>\$124,400</u>
Board's determination of improvement value	\$ 61,220

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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 Lake County by the Assessor of that county at the value of \$124,400 for the land and the improvements at a value of \$61,220, for a total market value of \$185,620. The appeal of the taxpayer is therefore granted in part and denied in part and, the decision of the Lake County Tax Appeal Board is modified.

Dated this 19th day of November, 1999.

BY ORDER OF THE
STATE TAX APPEAL BOARD

(S E A L)

GREGORY A. THORNQUIST, Chairman

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.

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 19th day of November, 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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