

BEFORE THE STATE TAX APPEAL BOARD
OF THE STATE OF MONTANA

THE DEPARTMENT OF REVENUE)	DOCKET NO.: PT-2003-36
OF THE STATE OF MONTANA,)	
)	
Appellant,)	
)	
-vs-)	FACTUAL BACKGROUND,
)	CONCLUSIONS OF LAW
EARL E. WOODRING,)	ORDER and OPPORTUNITY
)	FOR JUDICIAL REVIEW
Respondent.)	

The above-entitled appeal was heard on August 8, 2005, in Kalispell, Montana, in accordance with an order of the State Tax Appeal Board of the State of Montana (Board). The notice of the hearing was given as required by law. The Department of Revenue (DOR) was represented by Scott Williams, Region Manager, Laura VanDeKop, Appraiser, and Carolyn Carman, Appraiser. DOR presented evidence and testimony in support of the appeal. The taxpayer was not present and not represented at the hearing.

The appeal involves a ten-acre tract of land with no improvements. The duty of this Board is to determine the appropriate market value for the property based on a preponderance of the evidence provided in the appeal process.

FACTUAL BACKGROUND

1. Due, proper, and sufficient notice was given of this matter, of the hearing, and of the time and place of the hearing.

All parties were afforded opportunity to present evidence, oral and documentary.

2. The subject property is a ten acre parcel of tract land and is described as follows:

Tract 3AA in the South half of the Southwest quarter of the Southeast quarter of Section 14, Township 29 North, Range 20 West in the County of Flathead, State of Montana. (Geocode #07-4079-14-4-01-01-0000). (DOR Exhibit C, page 1).

3. The DOR assessed the subject property at \$75,001 for tax year 2003. (DOR Testimony).
4. The Taxpayer filed an AB-26 Request for Informal Review with the DOR on August 14, 2003, saying:

Can not use do (sic) to Forest Service will not let me remove shale do (sic) to the fact it will slide of (sic) Forest Service land. About 5 acre are [unsuitable].

5. On September 4, 2003, the DOR sent the results of the informal review to the Taxpayer, stating that an adjustment was made for the following reasons:

5 ac. of land reclassified as non-buildable, therefore reducing the overall land value to 58,501 for tax year 2003. (AB-26 Form).

6. A revised assessment notice dated 09/10/2003 was sent to the Taxpayer and reflected the DOR's adjustment to \$58,501 in total assessed value. (DOR Exhibit B, page 8).
7. The Taxpayer filed an appeal with the Flathead County Tax Appeal Board (County Board) on October 16, 2003, stating:

6 acres is usable, but 4 acres cannot be used due to the Forest Service, no road, no electricity, county has a 30 ft road rightaway (sic). (Appeal Form).

8. On December 9, 2003, the County Board issued a decision adjusting the appraised value and stating:

It is the decision of the Board that the value of the LAND be adjusted to \$29,000.00. The DOR is ordered to place this value on the land for the 2003 tax year. (Appeal Form).

9. The DOR appealed that decision to this Board on December 19, 2003, stating:

The nature of the proof adduced at the hearing was insufficient, from a factual & legal standpoint, to support the [County] Board's decision. (Appeal Form).

DOR CONTENTIONS

DOR contends that the County Board did not have jurisdiction in this matter because the Taxpayer's appeal to the County Board was not timely filed. After the AB-26 review was completed, the DOR notified the Taxpayer of an adjustment in the value of the subject property. That notice was mailed on September 4, 2003. (Exhibit 3, page 7) DOR testified that a revised assessment notice was mailed to the Taxpayer on September 5, 2003; however, the date on this document is September 10, 2003. (Exhibit B, page 8) DOR explained that it is DOR policy to post-date the notice to compensate for any mailing delay. The Taxpayer did not file the appeal to the

County Board until October 16, 2003. DOR contends that October 10, 2003, was the deadline for the Taxpayer to file the appeal. (Section 15-15-102 Montana Code Annotated; Exhibit B, page 3) Thus, according to the DOR, the appeal was six days late and the County Board did not have jurisdiction to hear the appeal. (Exhibit A)

In regard to the appeal itself, DOR stated that the Taxpayer presented no substantive evidence to the County Board to support the value he requested. According to the DOR, the County Board was not given sufficient data on which to determine that the DOR value does not meet the market value standard required by 15-8-111, Montana Code Annotated. (Exhibit A)

Through the AB-26 review process, the DOR found that 5 acres of the subject property was non-buildable. (Exhibit B, page 7) Exhibit C, page 2 is the property record card for the subject showing the change in assessment made as a result of the AB-26 process: 5.07 acres are valued as the primary site and 5.00 acres are valued as non-buildable. Exhibit C, page 3 shows the resulting valuation, a total of \$58,501, and Exhibit C, pages 4 and 5 demonstrate how that total was derived. The non-buildable portion of the subject is valued at \$1000 per acre.

Exhibit D, page 2 gives information on six comparable land sales used for determining the value of the subject. DOR noted that all six of the comparables are five-acre parcels and that

the Department used these comparables to establish a value for the five-acre buildable portion of the subject property only. DOR was unable to find any sales of ten-acre parcels where only five acres were buildable. (Testimony of Appraiser VanDeKop) After applying a time adjustment to trend the sales price from the sales date to the assessment date, four of the six comparable properties had sales prices higher than the assessment value of the subject. The other two properties' sales prices were somewhat less, but these properties had a steeper terrain than the subject, according to the DOR. (Exhibit D, page 2 and testimony of Appraiser VanDeKop)

In addition to the comparable land sales, the DOR provided MLS data sheets for two sales of the parcel adjacent to the subject property. This adjacent property is a fully buildable ten-acre parcel, which the Taxpayer sold in July 2000 for \$60,000. (Exhibit D, page 9) The parcel resold in December 2002 for \$90,000. (Exhibit D, page 10) DOR asserts that these sales demonstrate that the value the DOR assigned to the subject property is lower than the market value of the adjacent parcel as established through these sales. The lower assessed value of the subject is warranted, according to the DOR, because only about half of the subject is buildable. (Testimony of Appraiser VanDeKop)

TAXPAYER'S CONTENTIONS

Because the Taxpayer was not present at the hearing, the Taxpayer's case has been drawn from the transcript of the County Board hearing. The Taxpayer stated that about four acres of the property is non-buildable because of a shale slide. He pointed out the line on the certificate of survey (DOR Exhibit A, page 6, County Board hearing record) that is the edge of the shale slide; the line cuts across the property about midway through the parcel. In the past, he had removed some of the shale and sold it. The Forest Service now prohibits him from removing shale from his property because that would cause more shale to slide off the Forest Service property.

The Taxpayer stated that he had sold the adjacent ten acres for \$60,000 and all ten acres of that parcel are buildable. He noted that (at the time of the County Board hearing) he believed the DOR had the subject ten acres valued at \$59,000 and only six acres of that parcel are buildable.

BOARD DISCUSSION

The first issue the DOR raised was the timeliness of the Taxpayer's appeal to the County Board and, by extension, the jurisdiction of this Board to hear the appeal. DOR testified that a revised assessment notice for the subject property was mailed on September 5, 2003. However, the revised notice is dated 9/10/2003 (Exhibit B, page 8) and we must rely on the document's date. The Taxpayer has thirty days after receiving

the notice to file an appeal with the County Board (Section 15-15-102 Montana Code Annotated). Rule 6(e), Montana Rules of Civil Procedure, provides that:

Whenever a party has the right or is required to do some act or take some proceedings within a prescribed period after the service of a notice or other paper upon the party and the notice or paper is served upon the party by mail, 3 days shall be added to the prescribed period.

The 9/10/2003 revised assessment notice was mailed to the Taxpayer, thus adding three days to the thirty-day period allowed for an appeal to the County Board. The Taxpayer likewise mailed the appeal to the County Board, which added another three days to the thirty-day appeal period. The Taxpayer's appeal form was received on October 16, 2003 (Exhibit B, page 9), the final day of the period allowed for appeal and service by mail. The Board denies the DOR's request to overturn the County Board's decision on the basis of timeliness of the appeal.

The Taxpayer appropriately questioned the original \$75,001 valuation of the subject property since about half of this tract is non-buildable due to a shale slide. The DOR addressed this issue through the AB-26 review process, re-classifying five acres of the ten acre tract as non-buildable and adjusting the total valuation to \$58,501 (Exhibit C, page 3).

The Taxpayer did not appear at the hearing held on the matter by this Board, necessitating our reliance on the record of the County Board's hearing for the Taxpayer's point of view. At the County Board hearing, the Taxpayer failed to present any evidence to justify a further reduction in the value of the subject property beyond the reduction made through the AB-26 review process.

The DOR did appear at the State Board's hearing on this matter and presented information on how the value of the subject property was calculated (Exhibit C, pages 4 and 5). The DOR also provided support for the valuation of the buildable portion of the subject through the introduction of information on six comparable land sales (Exhibit D, page 2).

However, the DOR did not offer any support for the value assigned to the non-buildable five-acre portion of the subject. In testimony, the DOR acknowledged that there is no market data to support the \$1000 per acre assessed for non-buildable properties and that the value contributed by the non-buildable portion of this tract could be \$100 an acre or \$1000 an acre. (Testimony of Appraiser VanDeKop).

It is the opinion of this Board that the market, in the form of a potential purchaser of the subject property, will value the subject as a single, ten-acre tract, not as a buildable 5.07-acre tract and a non-buildable five-acre tract.

The DOR has offered no market data for the value placed on the non-buildable portion of the subject or for valuing the buildable and non-buildable portions of the subject separately.

This Board must evaluate the evidence that it has been presented and issue an opinion of value based upon that evidence. It is the opinion of this Board that, whatever the value of the non-buildable five acres of the subject property may be, it is subsumed in the greater value of the full ten-acre parcel. Accordingly, it is the opinion of the Board that the best indication of value for the entire ten-acres of the subject property is \$53,501.

CONCLUSIONS OF LAW

1. The State Tax Appeal Board has jurisdiction over this matter. §15-2-301, MCA.
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. §15-15-102 MCA. Application for reduction in value. . . . The application must be submitted on or before the first Monday in June or 30 days after receiving either a notice of classification and appraisal or determination after review under 15-7-102(3) from the department, whichever is later. . . .

4. Rule 6(e), Montana Rules of Civil Procedure. Whenever a party has the right or is required to do some act or take some proceedings within a prescribed period after the service of a notice or other paper upon the party and the notice or paper is served upon the party by mail, 3 days shall be added to the prescribed period.
5. Albright v. Montana Department of Revenue, 281 Mont. 196, 933 P.2d 815 (1997).
6. The appeal of the Department of Revenue is hereby granted in part and denied in part and the decision of the Flathead County Tax Appeal Board is modified.

//

//

//

//

//

//

//

//

//

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 Flathead County by the local Department of Revenue office at the value of \$53,501. The decision of the Flathead County Tax Appeal Board is modified.

Dated this 26th day of August 2005.

BY ORDER OF THE
STATE TAX APPEAL BOARD

(S E A L)

GREGORY A. THORNQUIST, Chairman

JOE R. ROBERTS, Member

SUE BARTLETT, 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

I certify that on this 26th day of August 2005, a true and correct copy of the foregoing Order was served by placing same in the United States Mail, postage prepaid, and addressed as follows:

Earl E. Woodring
1830 Ashley Lake Road
Kalispell, MT 59901

Office of Legal Affairs
Department of Revenue
Mitchell Building
Helena, Montana 59620

Appraisal Office
Flathead County
100 Financial Dr. Suite 210
Kalispell, Montana 59901-1313

James Eddington
Flathead County Tax Appeal Board
P.O. Box 1313
Suite 224
Kalispell, Montana 59903-1313

DONNA EUBANK
Paralegal