

BEFORE THE MONTANA TAX APPEAL BOARD

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THE DEPARTMENT OF REVENUE	)	DOCKET NO.: PT-2013-22
OF THE STATE OF MONTANA,	)	
	)	
Appellant,	)	
	)	FINDINGS OF FACT,
-vs-	)	CONCLUSIONS OF LAW,
	)	ORDER and OPPORTUNITY
HICKORY SWING, LLC.	)	FOR JUDICIAL REVIEW
	)	
Respondent.	)	

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**Statement of Case**

The Department of Revenue (DOR) appeals the January 15, 2014, order of the Cascade County Tax Appeal Board (CTAB) that placed the Taxpayer's requested value of \$700,000 on an 81.28-acre parcel and improvements upon it. This property is identified as Lot 1, 50-96, 41-05, Block 1, Section 10, Township 20N, Range 03E, Jewel Addition to the City of Great Falls, Cascade County.

The subject land is improved with an 18-hole executive style golf course with a par of 60/61. HICKORY-DOR 000246. The course consists of 18 playable greens (approximately 120,000 square feet) and a practice facility (approximately 12,000 square feet.) *Id.* There are two building improvements viz. a clubhouse and a combination cart barn and maintenance facility.

HICKORY-DOR 000247. Directly south of the clubhouse is a level and rectangular driving range about 400 yards long. *Id.*

The Montana Tax Appeal Board (Board) held a hearing on April 23, 2015. Tax counsel Michele Crepeau represented the DOR. Charles Pankratz, DOR region 2 manager, was present. Brenda Ivers, the Cascade County lead appraiser, and Mark Liggett, a Hickory Swing LLC member, presented testimony and evidence in support of the appeal. The Taxpayer was represented by attorney Steven T. Potts, Richard Zadick, a Hickory Swing LLC member; Peter J. Fontana<sup>1</sup>, a fee appraiser, and Thomas G. Stevens, a MAI appraiser. Zadick and Stevens provided testimony and evidence in opposition to the appeal.

The record remained open for post-hearing submissions. Both parties submitted post-hearing briefs. The Board having fully considered the testimony, exhibits, post-hearing submissions and all matters presented, finds and concludes the following:

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<sup>1</sup> Mr. Fontana is also a member of the Cascade County Tax Appeal Board but did not participate in that board's hearing on the subject property's value.

### Issue

The issue before the Board is whether the Department of Revenue determined an appropriate market value for the subject property for tax year 2013.

### Summary

Hickory Swing, LLC, is the Taxpayer in this action and therefore bears the burden of proof to support their proposed value of \$750,000. Based on a preponderance of the evidence, the Board modifies the decision of the Cascade County Tax Appeal Board consistent with this opinion.

### Findings of Fact

1. Due, proper and sufficient notice was given of this matter and of the time and place of the hearing. All parties had an opportunity to present verbal and documentary evidence.
2. The subject property is an executive-style 18-hole golf course, situated upon 81.28 acres, with associated improvements, located within the city of Great Falls, with the following legal description:

Lot 1, 50-96, 41-05, Block 1, of the Jewel Addition to the City of Great Falls, County of Cascade, State of Montana, Geocode #02-3015-10-4-06-01-0000. (Property Record Card).

3. For tax year 2013, the DOR valued the subject property at \$3,813,772.00, using the replacement cost new less depreciation (RCNLD) approach. (DOR Administrative Hearing Status Questionnaire at 1.)
4. Taxpayer filed an AB26 form for informal property value review with the DOR on October 26, 2012. As a result of this review, the land value was reduced by over \$2,000,000 to \$1,785,880. (DOR Administrative Hearing Status Questionnaire at 1.)
5. Subsequent to a lower value being placed upon the subject at the conclusion of the informal review, Taxpayer filed an appeal with the Cascade County Tax Appeal Board (CTAB) on August 29, 2013, requesting a reduction in the total value of the subject property to \$700,000, which was the approximate amount paid at a sheriff's sale in early 2011 (the actual amount was \$701,000 in cash and cancellation of a construction lien by LLC member Liggett in the approximate amount of \$200,000, for a total value "somewhat north" of \$900,000.) (MTAB Hr'g Tr. 72, 13-25.) \$700,000 was also the value conclusion of an appraisal report prepared by Thomas G. Stevens, MAI, on August 16, 2010 for the bank holding title to the property on that date. (Appeal Form, CTAB H'rg Tr. 3:8-9 Stip. Ex. 3.) The CTAB heard the appeal on November 6, 2013, and upheld the DOR value for the subject property. (Appeal Form.)

6. At the time of the CTAB hearing, the appointment terms of Chairman Arthur W. Dickhoff and Member Jean Clary had expired and the Cascade County Commission had not finalized reappointment of the two members. Dickhoff and Clary continued to sit on the board believing they were duly appointed. The CTAB heard testimony, accepted evidence, and issued its decision on this appeal and two others it heard that day. *See also CBA v. Department of Revenue and Russell Lee Voytoski, Jr., v. Department of Revenue.*

7. On December 3, 2013, *Hickory Swing* filed a complaint in the Montana Eighth Judicial District, Cascade County, alleging the November 6, 2013 hearings were invalid because Dickhoff and Clary's terms were expired at the time of the hearing. *See Hickory Swing, LLC., v. Department of Revenue.*

8. On January 15, 2014, the CTAB issued a Memo and Order voiding the November 6 hearing and granting taxpayer-requested values for the three appeals heard that day. DOR Notice of Appeal, Exh. A. The Memo stated that, because their terms had expired and they had not been re-appointed to the Board, the CTAB failed to properly hear the three appeals scheduled that day for hearing. *Id.* Under § 15-15-103(2), MCA, the CTAB treated the matter as never being timely heard by the Board before it went out of session for calendar year 2013. *Id.* Accordingly, all Taxpayer requested values for the three appeals heard on November 6, 2013 were adopted.

9. By order dated October 14, 2014, the Eighth District Court issued an order concluding that the CTAB hearings on November 6, 2013, were considered not to have occurred.
10. The DOR appealed from the CTAB Order of January 15, 2014, defaulting to the taxpayer-requested value of \$700,000.
11. DOR's appeal was held in abeyance pending the Eighth District Court's resolution of the issues in *Hickory Swing*. Once the final judgement and order was issued by the Court, DOR's appeal again became active before this Board.
12. This Board issued its order, dated November 6, 2014, stating that it would move forward with the DOR appeal in this matter.
13. The Taxpayer amended its requested value to \$750,000 at the hearing before this Board. The Taxpayer relied on two appraisals by Stevens in support of its new value.
14. Mr. Tom Stevens, MAI appraiser and witness for the Taxpayer, testified during the hearing that he performed an appraisal, as of August 16, 2010, for Mountain West Bank of Great Falls, of the subject property when it was known as Emerald Greens Golf Course. The purpose of the appraisal was to set a value for a sale due to a bank foreclosure. In that first fee appraisal, Stevens determined a total property value of \$700,000, allocating \$250,000 to the land and \$450,000 to the improvements. CTAB Exh. 1, p. 47, MTAB Hr'g

Tr. 9:19-25, 10:1-25, 11-1:2. He relied on both the cost and the sales comparison approach in arriving at this correlated value.

15. Steven's first cost approach valuation yielded a market value of \$650,000 and the sales comparison approach indicated a market value of \$720,000.

CTAB Exh. 1, p. 46, MTAB H'rg. Tr. 11:9-13, Mr. Stevens testified that he did not perform an income approach to value due to the lack of historic income and expense information from similar golf course owners. MTAB Hr'g Tr. 11:17-25.

16. In Stevens' highest and best use analysis, he concludes that, due to the operational history, the overall population of Great Falls, and the competition for golf play at the two 18-hole municipal golf courses and the one 18-hole private golf course, "it appears that a for-profit enterprise in its current configuration is not viable." HICKORY-DOR 000267.

17. Stevens relied upon the sale of five similar sized land parcels to arrive at a market comparable land value of \$250,000 in the 2010 appraisal. These comparable sales occurred in the immediate Great Falls area and ranged in size from 20.004 acres to 97.62 acres. The sales occurred between September of 2005 and December of 2008. Sales prices ranged from \$130,000 for the 20.004 acre parcel and \$1,000,000 for a 57.84 acre parcel. Stevens made reductions in value for parcel size, location, changing market conditions across time and zoning in order to arrive at a per acre value estimate for the subject property.

The end result of these adjustments was that he set a per acre value for the bare land of the golf course at \$3,100 per acre, or \$250,000 rounded (\$3,100 times the subject 81.28 acres.) Stip. Ex. 3, HICKORY-DOR 000270-000277.

18. Using the Marshall Swift Valuation Guide, which put forth value on a cost per hole basis depending on the type and quality of the subject course, Stevens arrived at a cost value of \$1,181,467 for the improvements constituting the 18-hole course and \$237,503 for the building improvements (clubhouse and cart barn) for a total improvement value of \$1,418,970. Stip. Ex. 3, HICKORY-DOR 000277-000278. To this total improvement value, he then applied a 72% deduction for physical, economic and functional depreciation based upon an analysis of the sale of two golf courses in western Montana. Stevens did not allocate specific reductions in value for each of the categories of depreciation due to any physical, economic or functional obsolescence. MTAB H'rg Tr. 40: 22-25; H'rg Tr. 41: 1-5; H'rg Tr. 42: 8-15. The total improvement value, as determined by the cost approach after applying the 72% reduction factor was then rounded to \$650,000. Stip. Ex. 3, HICKORY-DOR 000278-000281. MTAB Hr'g Tr. 18:6-22.

19. Stevens' 2010 appraisal also included a sales comparison approach using the sales of three other golf course properties. The sales prices were adjusted for the presence of improvements, a beer/wine license, etc., to arrive at a value indication for the 9-hole golf course properties. The value determined by the

sales comparison approach was calculated at \$720,000. Stip. Ex. 3, HS-000283-000289. The per hole gross values set out below eventually had the 72% reduction factor applied for overall depreciation. Stevens testified that “the market” set the percent reduction due to all forms of depreciation and obsolescence. H’rg Tr. 18:7-14.

Sale No.	Location	Date	Sale Price	Size	\$/Hole
1	Missoula, Montana	4/2008	\$500,000	9 Hole	\$55,555
2	Kalispell, Montana	2005	\$600,000	9 Hole	\$66,667
3	Cloquet, Minnesota	5/2009	\$250,000	9 Hole	\$27,777

20. Stevens determined the depreciated percentage by estimating the cost of purchasing the land and developing the golf course and then contrasting that with the prices obtained at sale. For example, he estimated the replacement cost new of the Missoula course to be \$2,000,000. Since it sold for \$500,000, the reduction would be 75%. For the Kalispell course, he estimated a reproduction cost of \$2,200,000. Although it sold for \$1,200,000, he estimated that the improvements “contributed in excess” of \$600,000 to the purchase price. Thus, \$1,600,000 was lost to “all forms of depreciation and obsolescence, or 72%.” Stipulated Ex. 5, at HS-000285-000288. This

depreciation figure was eventually used as part of both the cost and sales approach calculations.

21. In preparation for this appeal, Taxpayer engaged Stevens to prepare an appraisal report of the subject property as of the lien date, July 1, 2008.<sup>2</sup> This later report, dated February 25, 2015, was very similar to the 2010 appraisal and found a cost approach value of \$700,000 and a sales comparison approach value of \$760,000. The final correlated indication of value, time trended to July 1, 2008, was \$750,000. Stipulated Exh. 5 at HS-057-058, MTAB Hr'g Tr. 20:5-21.

22. Stevens again relied upon the sale of five similar sized land parcels to arrive at his land value of \$260,000 in the appraisal with a valuation date of July 1, 2008. These sales occurred in the immediate Great Falls area and ranged in size from 20.004 acres to 97.62 acres. The sales occurred between September of 2005 and December of 2008. Sales prices ranged from \$130,000 for the 20.004 acre parcel and \$1,000,000 for a 57.84 acre parcel. The raw price for the sales of bare land ranged from \$18,822 to \$4,969 per acre. Stevens made adjustments for parcel size, location, changing market conditions across time, and zoning. These adjustments resulted in setting values for the sales that ranged from \$3,104 to \$3,247 per acre. Stevens then set the value for the

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<sup>2</sup> ARM 42.18.124 (b) dictates that all class four properties must be appraised at the market value as of July 1, 2008 for the taxable years from January 1, 2009 through December 31, 2014.

subject land at \$3,200 per acre, or \$260,000 rounded (\$3,200 times the subject 81.28 acres). Stip. Ex. 5, HS-38-45. Stevens did not provide documentation or an explanation in his appraisals for the specific deductions due to the identified factors that he applied to the sales prices of the parcels of bare land.

23. For the later appraisal, Stipulated Exh. 5, trended to July 1, 2008, and again using the Marshall Valuation Guide, he arrived at a value of \$1,291,662 for the 18-hole course and \$354,868 for the building improvements (clubhouse and cart barn) for a total improvement value of \$1,646,530. Stip. Ex. 5, HS-045-046 To this improvement value, he applied a 73 % deduction for physical, economic and functional depreciation based upon an analysis of the sales of two golf courses in western Montana. The value of the improvements was thus reduced to \$444,563. The total value, as determined by the cost approach, was determined to be \$700,000, rounded, (land - \$260,000 plus improvements - \$444,563). Stip. Ex. 5, HS-050.

24. For the time trended July 1, 2008 appraisal, Stip. Ex. 5, Stevens again relied upon the following sales of golf course properties. He adjusted the values for the presence of improvements, a beer/wine license, etc., to arrive at a value indication for the 9-hole golf course properties. The value indication under the sales comparison approach was \$760,000. Stip. Ex. 5, HS-0051-0056. He dropped the third comparable sale as it fell after the lien date.

25.

Sale No.	Location	Date	Sale Price	Size	\$/Hole
1	Missoula, Montana	4/2008	\$500,000	9 Hole	\$55,555
2	Kalispell, Montana	2005	\$600,000	9 Hole	\$66,667

26. Stevens work indicates a value of either \$42,000 or \$50,000 per hole. He chose to apply the lower value because the lower figure represented a course with a conservation easement on it. He reasoned the conservation easement was similar to the open space requirements of the subject property. It resulted in a total value of \$760,000, Stip. Ex. 5, at p. 56, (choosing the \$50,000 per hole figure for the eighteen hole course would result in a total value of \$900,000).

27. The subject property is zoned Planned Unit Development (PUD), a change from its original zoning as First Industrial-D area. As such, Stevens testified the land cannot be used for anything other than open space, thus limiting its desirability in the marketplace. Stip. Ex. 3, HS-000265, MTAB Hr'g Tr. 17:5-25, 18:1. Stevens did concede in his testimony that the PUD and subsequent zoning restrictions imposed by Great Falls' city ordinance were not permanent and that they could be changed, although he opined that such changes were highly improbable. MTAB Hr'g. Tr. 26: 20-25; Hr'g. Tr. 27: 1-10.

28. Stevens further speculated that other potential uses of the golf course as open space would have a limiting effect on marketability, such as an

“equestrian facility, trap and skeet club in conjunction with hunting dog trials, or development of soccer fields, softball fields, walking or jogging trails, and cross country ski trails.” Stip. Ex. 5, HS-035.

29. Although the subject property is surrounded on all sides by a variety of heavy and light industrial, commercial and residential uses, Stip. Ex. 5, HS-18, Stevens was of the opinion that “any type of residential or commercial development would be practically impossible...it would be physically impossible to develop the site with large scale building improvements” due to the high ground water in a majority of the area. Id. at 33.

30. The DOR used the cost approach to determine the value of the improvements. The total property value was originally valued by the DOR at \$3,813,722. The 81.28 acres of bare land was valued at \$2,266,072 or \$27,880 an acre. Stip. Ex. 4, HS-000439. The buildings and improvements to the land on the course were valued at \$1,547,700. Id.

31. The Taxpayer filed an AB26 form for informal review on October 26, 2012. At the conclusion of the informal review process, the land value was reduced to \$739,692<sup>3</sup> or a value of \$9,100 an acre. The 18-hole golf course improvements value was reduced to \$782,211, or \$43,456 per hole, a reduction from the original value per hole of 50 %. Slight upwards adjustments to the

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<sup>3</sup> The land was reassigned with a residential neighborhood classification from a commercial neighborhood class. Hr'g Tr. 68:1-5.

clubhouse were made to reflect the discovery of paving and a central area, resulting in a revised value of \$103,640. The value of the cart barn was also slightly modified to \$148,830. The total value of the building improvements was thus \$252,470. Stip. Ex. 2, HS-000061. The grand total of value was eventually reduced by over \$2,000,000 to \$1,785,880. Stip. Ex. 2, HICKORY-DOR 000061, MTAB Hr'g Tr. 52:1-25, 53:1-12.

32. The DOR considered that the reductions in value because of the AB-26 informal review were "more than a reasonable adjustment" and reflected a "fair and equitable market value." Ivers explanation, Stip. Ex.2, HS-000061.

33. The DOR testified that, in an attempt to obtain a fairer land value, appraisers changed the original classification of the land from commercial to residential. Other commercial lots in the area were valued at between \$31,000 and \$41,000 per acre making the \$9,100 an acre by residential comparison, a more reasonable figure. Ivers explanation, Stip. Ex. 2, HS-000061. Similarly, the appraisal system initially pegged a value of \$87,250 per hole for improvements. But the DOR cut this value in half to \$43,456 per hole because this course "lacks ... some of the typical cost per hole components." Id.

34. Under cross examination at the hearing before this Board, the DOR appraiser was unable to assign a specific value or describe what part depreciation, functional or economic obsolescence played in each of the

calculations or reductions. MTAB Hr'g. Tr. 61: 7-25; Hr'g. Tr. 63:15-18; Hr'g. Tr. 64: 17-19.

35. Also under cross examination at the hearing before this Board, the DOR appraiser offered a confusing explanation of the application of a 15% depreciation factor, as well as another 18% reduction in the cost per hole calculations. The testimony was that the 15% factor for golf courses was set as a statewide factor for all golf courses by the Helena DOR office. The 18% factor was apparently applied at the discretion of the local office to reflect the quality of the course. MTAB Hr'g. Tr. 68:24-25, 69:1-13. *See also* Hickory Swing Brief at p. 3: she "began with \$43,625 per hole and ended with \$43,456 per hole...Mathematically...the \$43,650 figure is incorrect."

36. The DOR "did not conduct a comparable sales valuation and asserts that no comparable sales existed." DOR Brief at p. 5.

37. The DOR found much fault with Steven's reductions applied to bare land sales. The DOR maintains that the "adjustments for location, time, and use restrictions are not supported by and [sic] documentary evidence in either his report or his work files." DOR Brief at p. 6.

38. At the hearing, DOR maintained that its value of \$1,785,000 was fair market value. MTAB Hr'g. Tr. 82:23-25. Hickory Swing maintained that the Stevens appraisal of \$750,000 represented fair market value. MTAB Hr'g. Tr. 80:9-12.

39. One member of the Hickory Swing LLC (Zadick) testified in support of the lower valuation by Stevens and the other member of the LLC (Liggett) thought the higher DOR valuation was fair. There are ongoing legal proceedings, MTAB Hrg. Tr. 74: 21-24, involving the members and the LLC. Relations between the members are “not good,” Id. at p. 75: 19-21. The perspective of which member might buy the other one out to resolve the conflicts may influence that individual’s view of fair market value.

### **Principles of Law**

1. The Montana 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).
4. When determining the market value of commercial properties, department appraisers will consider, if the necessary information is available, an income approach valuation. If the department is not able to develop an income model with a valid capitalization rate based on the stratified direct market analysis, the band-of-investment method, or

another accepted method, or is not able to collect sound income and expense data, the final value chosen for ad valorem tax purposes will be based on the cost approach or, if appropriate, the market approach to value. The final valuation is that which most accurately estimates market value. (42.20.107, ARM).

5. The appraised value supported by the most defensible valuation information serves as the value for ad valorem tax purposes. (ARM 42.18.110(12).)
6. The state tax appeal board must give an administrative rule full effect unless the board finds a rule arbitrary, capricious, or otherwise unlawful. (§15-2-301(4), MCA.)

### **Discussion and Conclusions of Law**

The Board must determine, based on a preponderance of the evidence, whether the DOR set an appropriate valuation for the subject property for tax year 2013.

As a general rule, the appraisal of the Department of Revenue is presumed to be correct and the Taxpayer must overcome this presumption. The Department of Revenue should, however, bear a certain burden of providing documented evidence to support its assessed values. *Farmers Union Cent. Exch. v. Department of Revenue*, 272 Mont. 471, 901 P.2d 561, 564 (1995);

*Western Airlines, Inc., v. Michunovich*, 149 Mont. 347, 353, 428, P. 2d, 3, 7, *cert. denied* 389 U.S. 952, 19 L. Ed. 2d 363, 88 S. Ct. 336 (1967).

The Department may use different approaches (for example, market, income, and/or cost approaches), depending on available data, to appraise a property. *See, e.g., Albright v. Montana Department of Revenue*, 281 Mont. 196, 933 P.2d 815, (1997).

Given the statutory definition of market value, *i.e.*, the value at which property would change hands between a willing buyer and a willing seller, the “market” approach using comparable sales is the preferred approach in valuing residential property when adequate data is available.

Montana statutes require all land to be valued on the same date in order to produce uniform assessments across the state. *See, e.g.,* §§ 15-7-103(5), 15-7-111(3), 15-7-112, MCA. *See also* Rule 42.18.124(b), ARM (setting the appraisal date for valuation as July 1, 2008 for the valuation period of 2009-2014). Thus, the property must be valued for tax purposes on July 1, 2008. Sales that took place prior to that date are time-trended to achieve a market value for the date of valuation. Time trending requires calculating the average increase or decrease per month in a specific area and applying the percent change to verified sales data. Sales that occurred after the valuation date may not be used

for valuation of the property. Thus, all taxpayers are subject to the same market effects by virtue of the same tax appraisal date.

It is the opinion of this Board that, with regard to the land value, the DOR met its burden of proof and Hickory Swing did not provide sufficient evidence to dislodge the DOR's valuation of the land at \$739,692. It is the further opinion of the Board that the DOR failed to meet its burden of proof and Hickory Swing provided sufficient evidence to sustain its proposed value of the improvements at a value of \$444,563. The Board finds that the record supports a total fair market value for land and improvements of \$1,184,255.

The Board finds that the DOR valued the land appropriately. Initially the DOR valued the land under a commercial classification. The uncontroverted testimony in the record is that commercial acreage in this area had values that ranged from \$31,000 - \$41,000 an acre. (Stipulated Exh. 2, HICKORY-DOR 000061). In contrast, Hickory Swing presented evidence of residential land sales in Great Falls for the pertinent time period that ranged in value from \$18,822 to \$4,969 per acre. The appraisal states that a simple average indicates a price of \$12,500 an acre, however, when one actually does the math, the average is \$10,964 an acre. During the AB-26 review process, the DOR altered the commercial classification and set a value of \$9,100 per acre under a residential classification. The record reflects that this figure represents

the value of residential land in the neighborhood. Hickory Swing was unable to cast much doubt on this figure.

The Board did not find the Hickory Swing's appraisal of the land credible. Using the sales figures for land in and around Great Falls, Hickory Swing's appraiser then applied various factors (changing market conditions, size of parcel, location and zoning/restrictions on future uses) which drove the values inexorably and more importantly, without clear explanation or documentation as to the weighting of each of the factors, down. It strains credibility that each and every one of these five sales ended up with a value pegged from \$3,104 to \$3,247 an acre and those numbers eventually permitted the appraiser to set a value of \$3,200 an acre on the subject land (\$260,000 total.) How this fee appraiser arrived at the land value is unsupportable in the record.

The Board finds the DOR's valuation of land more supportable by the evidence in the record. The DOR's appraisal figure of \$9,100 an acre also sufficiently takes into account the open space restrictions placed on the subject property (unlike the situation found in *Department of Revenue v. Grouse Mountain Development*, 218 Mont. 353, 707 P.2d 1113 (1985), in which the public use restrictions were permanent and not considered in setting a value, the zoning for this property may be changed by some future action of the City

of Great Falls). We are convinced that the evidence proffered by the DOR establishes that this 81.28 acre parcel of land located within Great Falls is worth \$739,692 and not the \$260,000 proposed by Hickory Swing.

As the findings above indicate, Hickory Swing's fee appraisal used both a comparable sales and cost approach to determine the value of the golf course improvements. In both approaches, the appraiser first estimated the prices of buying the bare land and placing buildings and other golf course amenities/improvements on the property, a replacement cost new estimate. Although these estimates were not supported by documents in the appraiser's work file, the DOR failed to provide any evidence to controvert the cost estimates used which were used for the Missoula and Kalispell nine-hole courses.

The next step in the appraisal process was to compare the actual sales price of the golf course properties against the replacement costs. Comparing the actual sales price against the replacement costs gave Stevens a depreciation rate (in one case 75% and in the other 73%) due to functional or economic obsolescence (specific allocations of value for each category were not offered). Again, the appraiser's work file did not contain specific background information on the sources he used to obtain these figures. Although the DOR

provided some evidence on the cost per hole calculation, it did not defeat the formula, process, or findings of the Stevens appraisal.

The DOR provided inconsistent testimony related to its methods for placing a fair market value on the subject improvements, starting with a value per hole from Marshall Swift, which was then cut in half due to the lack of usual amenities on this golf course. The DOR appraiser further testified that both a 15% and an 18% reduction in value were applied to the cost per hole calculations. The Board did not find this testimony credible. We are unable to reconstruct the DOR's process and the numbers used in the calculations do not add up. We thus conclude that the DOR failed to meet its burden of proof in valuing the subject improvements.

In contrast, Hickory Swing's appraisal clearly sets forth the process used to arrive at a value for the improvements on this golf course which takes into account reductions for all forms of depreciation. Stipulated Exh. 5, HS-045-050. Although the application of a 73% reduction in value seems excessive, the evidence in the record supports this figure and the DOR's case did not cast sufficient doubt on its use. Hickory Swing met its burden of proof as to the value of the golf course improvements.

Conclusion

To summarize, the site improvements for 18 holes were calculated to be \$1,291,662 (\$71,759 a hole). The clubhouse and cart barn value was \$354,868 for an improvements total of \$1,646,530. Once the 73% depreciation factor is applied, the resulting value of the improvements is \$444,563. Stip. Ex. 5, HS-050. The value of the land, as determined by the DOR, is \$739,692. Thus, we find the record supports a conclusion that the total value of the subject property is \$1,184,255.

Order

IT IS THEREFORE ORDERED by the Montana Tax Appeal Board that the subject property value shall be entered on the tax rolls of Cascade County at a 2013 tax year value of \$1,184,255, as determined by this Board.

Dated this 29<sup>th</sup> of June, 2015.

BY ORDER OF THE  
MONTANA TAX APPEAL BOARD

  
\_\_\_\_\_  
DAVID L. McALPIN, Chairman

  
\_\_\_\_\_  
STEPHEN A. DOHERTY, Member

(SEAL)

  
\_\_\_\_\_  
VALERIE A. BALUKAS, 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 29<sup>th</sup> day of June, 2015, 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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Attorney at Law  
625 Central Avenue West, Suite 200  
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Joan Vining  
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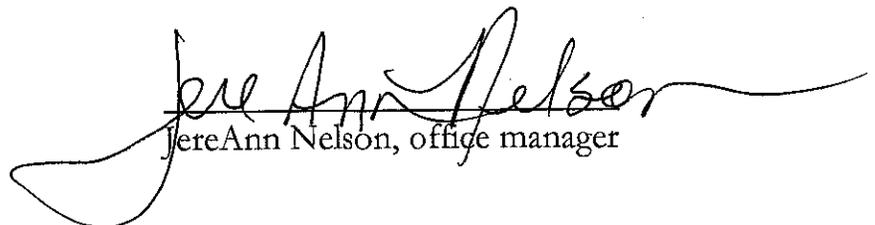
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