

BEFORE THE MONTANA TAX APPEAL BOARD

DENISE A. MORIGEAU,)	
)	DOCKET NO.: PT-2014-5
Appellant,)	
)	
-vs-)	FINDINGS OF FACT,
)	CONCLUSIONS OF LAW,
THE DEPARTMENT OF REVENUE)	ORDER and OPPORTUNITY
OF THE STATE OF MONTANA,)	FOR JUDICIAL REVIEW
)	
Respondent.)	

Statement of Case

Denise A. Morigeau (Taxpayer) appealed a decision of the Lake County Tax Appeal Board (CTAB) relating to the Department of Revenue (DOR)'s 2013 valuation of her property located at 27952 Montana Highway 35, in Polson, Montana. The Taxpayer contends the DOR overvalued the property for tax purposes and seeks a reduction in the value assigned by the DOR. The Montana Tax Appeal Board (Board) held a video hearing on February 24, 2015 in Helena. The Taxpayer, and her attorney, Matthew O'Neill, appeared by video from Polson. Teresa Whitney, tax counsel, represented the DOR. DOR appraiser Jim Bach and area manager Scott Williams provided testimony and evidence in support of the DOR's position.

The Board allowed the record to remain open for submission of post-hearing documents. The Board having fully considered the testimony, exhibits, and all matters presented, including post-hearing submissions, finds and concludes the following:

Issue

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

Summary

Denise A. Morigeau is the Taxpayer in this proceeding and, therefore, has the burden of proof. Based on a preponderance of the evidence, the Board modifies the decision of the Lake County Tax Appeal Board, as described in this decision.

Evidence Presented

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

2. The subject property is a 5.05 acre residential tract with the following legal description:

Lots 1 and 5, Block 1, Blue Grade Villa Sites Addition to the City of Polson in Section 22, Township 24N, Range 19W, County of Lake, State of Montana. *See* Appeal Form.
3. For tax year 2013, the DOR originally appraised the subject property at a value of \$740,112: \$615,222 for the land and \$124,890 for the improvements. *See* Appeal Form; *See also* Taxpayer Response to Administrative Hearing Status Questionnaire at 1.
4. The Taxpayer filed an AB26 form for informal review with the Department of Revenue. No change was made through the AB26 process because the Taxpayer canceled the March 4, 2014 appointment to review the property. DOR Response to Administrative Hearing Questionnaire at 1.
5. Because of an inspection conducted on June 26, 2014, just prior to the CTAB hearing, DOR reduced the improvement value from \$124,890 to \$117,630 on the property record card to reflect the temporary attachment of a shed and a correction to the year the dock was built. Appeal Form; Taxpayer and DOR Responses to Administrative Hearing Status Questionnaire at 2; Hr'g Tr. 31:12-17.
6. The Taxpayer filed an appeal with the Lake County Tax Appeal Board (CTAB) on April 11, 2014, and originally requested a land value of

\$57,133. Her requested land value was amended to \$112,535 at the county tax appeal board hearing. The Taxpayer is asking for an improvement value of \$105,000. Taxpayer and DOR Responses to Administrative Hearing Status Questionnaire at 2.

7. The Lake CTAB heard the appeal on July 10, 2014, and by a 2-1 vote adopted the DOR's amended improvement value of \$117,360. The land value was also unchanged. *See* Appeal Form; Taxpayer and Responses to Administrative Hearing Status Questionnaire at 2.

8. The Taxpayer appealed to this Board on August 15, 2014, stating:

“Dept. of Revenue assessed my buildings at a higher value than what I purchased it for in 2010 along with the record card being incorrect. Also, the land value was assessed at a higher rate than the lands comparable to other lands near the subject property.”
Appeal Form.

9. The Taxpayer testified that she purchased the subject modular home in April of 2010 for \$94,000. She then spent \$10,670 to place the home on a concrete foundation. Taxpayer Ex. 6, Hr’g Tr. 8:21-25, 9:1-9. Her requested improvement value of \$105,000 is based upon the sum of her actual purchase price and the concrete foundation costs in 2010. Hr’g Tr. 9:8-11.

10. Taxpayer does not dispute that the property was appropriately reclassified as residential and that it does meet the standards of a residential property.
11. Taxpayer alleges discrimination because of the different assessment methods between neighboring lots and her property. Her two lake front lots are assessed by the front foot and depth method while nearby properties referenced in her exhibits are assessed by the acreage method. Taxpayer Ex. 3; Ex. 4; Ex. 5.1- 5.10; H'rg Tr. 6:21-25, 7:1-6.
12. Taxpayer presented Montana cadastral information regarding the DOR assessment of nine properties located within 1.5 miles of the subject property. These properties are all assessed on an acreage, rather than a lakefront footage and depth, methodology. The assessed values range from a low of \$4,386 to a high of \$150,815. The subject land is assessed at \$615,222 and was valued using a front foot and depth methodology. Taxpayer Ex. 5.1-5.10; H'rg Tr. 13-17:21-21. Taxpayer conceded that she has fifty feet of lake frontage and that she owns a dock on that frontage that allows her access to Flathead Lake. However, she testified that she has to cross the busy Highway 35 to access the lake from her home site, and that there is an adjoining easement between her parcel and the lake that is commonly used by the public and guests of the Blue Bay Resort and campground.

13. Taxpayer produced evidence of sales prices of properties she deemed comparable to the subject property. Taxpayer's Exhibits 10, 11, 12, 13, 14, 15, and 16 contain Multiple Listing Service (MLS) listings pertinent to 2002 through 2008, summarized in Exhibit 17 and replicated in the following table:

Sale date	Lake frontage in front feet	Sale price
04/22/2002	176	\$95,000
01/23/2002	153	\$90,000
06/09/2002	Access only	\$138,000 (including house on 2.5 acres)
10/22/2002	312	\$495,000 (including furnished cabin and dock and 1.31 acres)
03/14/2003	No waterfront, 3.44 acre lot	\$87,500
05/15/2003	No waterfront, 3.03 acre lot	\$40,000
07/01/2003	150	\$158,000
05/05/2004	Lakeview only, 4.18 acre lot	\$75,000
11/29/2004	1.81 acre lot close to public access to Flathead Lake	\$48,000
06/07/2004	Shared waterfront access only	\$245,900 (including a 3,000 square foot residence and 3.39 acres.)
08/13/2004	85 primary lakeshore plus 392 feet of steep lakeshore	\$350,000 (including a 1,200 square foot cabin and 3.1-4.9 acres)
03/01/2005	106	\$530,000 (including a 2,740 square foot residence and 1.30 acres)
10/14/2005	Lake view only (state lease lot through Feb. 2019)	\$104,000 (including a 1,868 square foot cabin and 3.73 acres.)
03/16/2006	None	\$50,000 (includes 3 acres)
03/16/2007	Deeded 1/6 interest in 92.37 feet of lakeshore with dock and boat slip	\$394,000 (including a 1,824 square foot residence on a 2.5 acre lot)
04/19/2007	None	\$50,000 (3.03 acres)
02/11/2008	Lake view only	\$215,000 for 2.71 acres

14. DOR determined an improvement value for the home of \$115,620 using the Replacement Cost New Less Depreciation (RCNLD) method of appraisal. The subject property is a 1,330 square-foot modular home constructed in 2010. It has been assigned a quality grade of five (average) with two bedrooms, two bathrooms, and electric forced air heating. The DOR's property record card (PRC) also shows a 70 square foot porch and two 42 square foot decks valued at \$1,334 and \$420 each, respectively. DOR Ex. B at 2; H'rg Tr. 31:17-25. The 7 foot by 40-foot dock was built in 1979 and is valued at \$2,010. DOR Ex. B at 3; H'rg Tr. 32:1-3.
15. DOR testified that the prior cycle land value was \$112,535¹. The land was previously classified as commercial land and was assessed under an acreage model. When Taxpayer filed for a building permit for her home, the filing prompted a DOR visit to the property. DOR determined the property had a waterfront with lake access and a dock on the lake. Taxpayer's AB26 form also mentioned 50 feet of lake frontage. The land value for the current cycle of \$615,222 recognized the lake access and useable shoreline and therefore used the front foot

¹ The Taxpayer's requested land value before this Board.

and depth method of assessment. The DOR appraiser testified that the land had been assessed incorrectly by classification as commercial for a number of years prior to the 2013 assessment. Bach Testimony, H'rg Tr. 32:5-17.

16. The subject property is historically referred to as a Villa lot (*See* legal description at Evidence Presented ¶ 3), because the property owner does not own the land to the high water mark. Typically, a right of way has been platted at the shoreline. With most Villa lots, the property owner maintains the practical use of the land to the high water mark, but in this instance, uncontroverted testimony indicates a major highway greatly inhibits access to the lake.
17. This property also has a public right of way on the Taxpayer's north line allowing extensive access by the public to the lakeshore in front of her property. Taxpayer testified that while she owns the dock and has placed "no trespassing" signs on her property, the right of way and proximity of her property to Blue Bay Resort makes enforcement of the "no trespassing" prohibition impossible.
18. The front of the subject property facing Flathead Lake is fully traversed by Montana Highway 35, a busy paved highway and the only north-south route on the East Shore of Flathead Lake between water's edge and the Mission Mountains. The western edge of the highway fully

abuts the lakeshore so the west highway embankment is near vertical, dropping from the guardrail to a shoreline covered with yards of large rocks extending to the high water mark. This coarse erosion control rock, known as riprap, is meant to absorb the energy of the wave action on the lake to prevent or mitigate erosion of the roadbed. Taxpayer testified that it is impossible to walk along approximately 332 feet of lakeshore in front of her property because the rocks are too large and uneven to safely traverse the shoreline. Similarly, the rocks prevent the beaching of a boat for all but the 50 feet of useable shoreline between the highway guardrail and the high water mark.

19. Taxpayer testified that the eastern side of her property above her home site is too steep to construct upon without special discretionary building permits. The remaining three sides of her property above her home site lack a legal right of way or any other means to access the mountainside, further limiting any potential development of the upper land. The DOR appraiser testified that he had not physically inspected the portion of the property uphill from the Taxpayer's home site.
20. Taxpayer testified that she had listed the property for sale in 2012 for \$495,000 but had received no inquiries or any offers from prospective buyers. DOR Ex. E; H'rg Tr. 22:23-25.

21. DOR Exhibit C contains the DOR's land sales comparisons that were used to value the subject land.

	Comp. 1	Comp. 2	Comp. 3
Sale Date	June 12, 2006	February 23, 2006	August 18, 2006
Sale Price	\$625,000	\$536,000	\$425,000
Lake front footage	233	176	120
Acreage	2.97	3.20	3.80
Adjusted Sale Price	\$650,500	\$519,711	\$439,535
Adjusted sale price per front foot	\$2,792	\$2,953	\$3,663

22. DOR appraiser Bach testified that he considers comparable No. 3 to be the most similar to the subject property in that the property owner also has to cross the highway to get to their waterfront. Mr. Williams further testified that these three sales were part of what he termed an "extreme topography model" that was developed in an attempt to find sales with property defects such as steep lake frontage or with a highway at the lakeshore, and, therefore, had similar challenges as the

subject property. Bach Testimony, H'rg Tr. 30:6-9; Williams' Testimony; H'rg Tr. 40:14-21.

23. The subject property was determined by the DOR to fall into the general category of Flathead Lake lots with deficiency due to steepness and/or limited access. In this instance, only 50 feet of lakefront are accessible, and Highway 35 greatly inhibits access from the home site to the lakefront. Taxpayer testified that most of the easternmost lot is 20-30 percent grade, and of the 383 feet of frontage, highway stabilization rock, riprap, prevents access to the lake by foot, or to the land by boat, to all but 50 feet. Finally, the lot is a Villa lot and therefore does not afford the owner exclusive access to the water's edge.
24. Bach calculated a paired sale comparison by reviewing sales of typical lots around Flathead Lake to lots with deficiencies similar to the subject. From that analysis and consideration of the three comparables offered at the hearings, DOR determined that a 75 percent reduction was warranted for the subject to account for the limited lake access and other deficiencies. There was no testimony by the DOR that it had itemized the various deficiencies nor divided the 75 percent discount among them when applying the discount.

25. The Land Valuation Formula Front Foot and Depth worksheet for the subject neighborhood assumes a standard lot depth of 300 feet and a standard lot frontage of 100 front feet. Williams testified that this lot was assigned a value based on the standard lot depth of 300 feet despite its actual depth being over 750 feet. H'rg Tr. 63:6-17. This decision had the effect of a reduction in value and was meant to offset the steep topography of the lot. Under normal circumstances, a calculation including the actual lot depth would have increased the \$2.4 million base frontage value by a factor of 1.63 or 63 percent. H'rg Tr. 63:6-11.
26. A front foot valuation equation begins by assigning a value of \$8,440 per front foot to the first 100 front feet of lake frontage and a value of \$5,435 for any frontage in excess of those 100 front feet. The subject property contains 382 front feet of lake frontage. This calculation assumes level and accessible frontage in its initial equation. A single discount for property defects is applied later in the equation under the heading of "influence factor" and, for the subject property; DOR placed an influence factor of 25 percent on Taxpayer's lots, which represents a 75 percent reduction in the appraisal. This discount was in recognition of the defects; specifically that she only enjoys 50 feet of usable or accessible lake frontage. That adjustment resulted in a land value of \$594,168 for the lake frontage and \$21,054 for the residual

land towards the back of the lots, for a total land value of \$615,222.
DOR Ex. B at 1; DOR Ex. H; Bach Testimony, H'rg Tr. 29:21-25;
H'rg Tr. 30:1-2.

27. Williams testified that the DOR has documented five or six deficient sales around Flathead Lake as comparable sales for assessment purposes as of the lien date. These defective property sales were considered similarly deficient to the subject as they had either limited access to the shoreline, steepness of grade, or a road or highway traversing the lot. H'rg Tr. 64:1-6. The record was not clear as to whether the comparables offered by the DOR had all the defects that the subject property has. Nor is it clear that the defects of the other comparables admitted were as severe as those of the subject.
28. Exhibit O was prepared in response to Taxpayer Exhibits 10, 11, 12, 13, 14, 15 and 16. Exhibit O shows that some of the properties referenced by Taxpayer were resold closer to the lien date of July 1, 2008 for substantially more than the sale price referenced by Taxpayer. DOR Ex. O, Bach Testimony, H'rg Tr. 54:6-25, 55:1-2.
29. Taxpayer's property record card admitted during the MTAB hearing indicates a two percent reduction for depreciation of the residence. This reduction is a typical reduction for a nearly new home. This

modular home was new in 2010 when it was installed on the property.

DOR Ex. I at 4.

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. The department shall adjust and equalize the valuation of taxable property among the several counties, between the different classes of taxable property in any county and in the several counties, and between individual taxpayers and shall do all things necessary to secure a fair, just, and equitable valuation of all taxable property among counties, between the different classes of property, and between individual taxpayers. §15-9-101.
4. 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.

5. For the taxable years from January 1, 2009, through December 31, 2014, all class four properties (residences) must be appraised at their market value as of July 1, 2008. ARM 42.18.124(b).
6. Residential lots and tracts are valued through the use of CALP models. Homogeneous areas within each county are geographically defined as neighborhoods. The CALP models reflect July 1, 2008, land market values. ARM 42.18.110(7).
7. The [Montana] 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.

Findings of Fact and Conclusions of Law

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

The Board has authority to hear evidence, find the facts, apply the law and arrive at a proper value for the subject property. 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, however, bears 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).

In this instance, there is sufficient evidence to convince the Board that the DOR did not adequately account for the totality of the defects of the subject property. However, while both parties made credible attempts to support their values, it is our determination that true market value is above the value sought by the Taxpayer and below the value appraised by the DOR.

First, the Board finds that the subject property was properly classified as residential land and appraised under the front foot methodology because the Taxpayer has access to 50 feet of lakefront, albeit limited by the defects listed in our findings above. We find, based on the above conclusion, that this Taxpayer was not treated differently than her neighbors to the south who have virtually no access to the lake and whose land was therefore correctly valued under the acreage method by DOR.

Second, we find the value of the improvements by the DOR is reasonable and defensible and, therefore, find for the DOR as to the improvements. We note that the DOR statutory mandate is to find

market value of improvements, §15-8-111, MCA, which may not be the same as the actual cost of the improvements in question, as argued by the Taxpayer. The record indicates that two percent depreciation was applied to the improvements, which we find reasonable. *See* Evidence Presented 29.

Further, the Board finds the DOR adequately applied a discount to compensate for the steepness and inaccessibility of the upper lot by waiving the depth adjustment factor for the subject. By waiving the typical formula for above-average depth of lot, DOR reasonably decreased the value of the property compared to the normal depth factor formula applied to level land valuation.

However, this Board finds that, even considering the substantial discount allowed for the defects influencing the land in question, the present value for this land set by DOR is above true market value when the totality of defects are considered. This Board is hard pressed to imagine any additional defects which a Flathead Lake property could suffer beyond those suffered by the subject property. The mass appraisal system required of the DOR is not designed to evaluate properties like the subject property, which is rare in the number and degree of defects associated with it.

It is clear from evidence submitted and testimony presented that the DOR's basis for valuation was centered on Comparable No. 3 in Exhibit C. We find the defective land comparables used as a basis for valuation of the subject by the DOR did not provide a reasonable comparison to the subject because the primary comparable relied upon, comparable No. 3, did not have as many defects as the subject. Nor were those defects as severe as the defects suffered by this subject property.

With regard to comparables No. 1 and No. 2, we find they did not illustrate enough common defects or the degree of defect to provide a reasonable basis for the front foot value comparison entered as evidence supporting the DOR's value. DOR Ex. C.

While comparable No. 3 was more similar to the subject property when compared to the other two comparables offered, we are not convinced it is a good comparable for the subject property. Comparable No. 3 also had a sloping back lot and Highway 35 transecting it, but evidence and testimony presented before this Board, including a photo of Comparable No. 3, indicates the lakefront below the highway was much more accessible and useable than the subject property. This

evidence renders Comparable No. 3 less than convincing as a comparable.

The subject has continuous defects both above and below the home site; namely steep inaccessible terrain above, and below a continuous highway, steep embankment, large rip rap boulders, ending at lake's edge where at high water not even a boat can safely beach nor can a person traverse the shore or embankment. By comparison, the photograph shows that comparable No. 3 has a larger fully-vegetated strip of land between the western edge of the highway and the high water mark of Flathead Lake with less extreme defects as to render it only somewhat comparable to the subject. DOR Ex. C.

We find that, for the reasons stated above, a higher reduction in the percentage influence factor is warranted. The higher reduction accounts for firstly, the presence of a major highway running between the home site and the portion of lake shore which is accessible, and secondly, the uncontroverted fact that the other 332 feet of frontage does not even allow the Taxpayer to safely walk or land a boat. These are two of the essential characteristics any buyer would consider in contemplating the purchase of a lake frontage property. Taken

together, and in consideration of the extreme defects evidenced in the record, a further deduction is justified.

Conclusion

We find an 85 percent reduction is warranted when all of the various defects are fully considered. This Board applies an influence of 15 percent, which, by using the DOR's own Land Valuation Formula worksheet, results in a land value of \$356,501. With the unadjusted improvement value of \$117,630 and a residual acreage of \$21,054, we find the market value of this property to be \$495,185.

Order

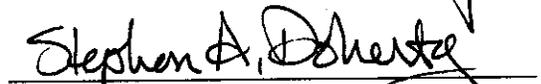
IT IS THEREFORE ORDERED by the Montana Tax Appeal Board of that the subject property value shall be entered on the tax rolls of Lake County at \$495,185 for the 2013 tax year.

Dated this 21st day of April 2015.

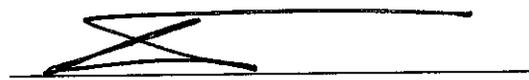
BY ORDER OF THE
MONTANA TAX APPEAL BOARD



DAVID L. McALPIN, Chairman



STEPHEN A. DOHERTY, Member



VALERIE A. BALUKAS, Member

(SEAL)

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 22nd day of April, 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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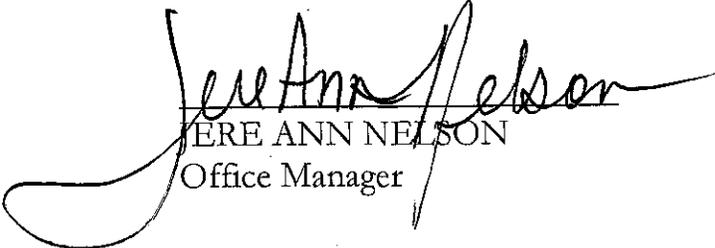
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