

BEFORE THE STATE TAX APPEAL BOARD  
OF THE STATE OF MONTANA

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NORLENE BREWER,	)	DOCKET NO.: PT-2012-21
	)	
Appellant,	)	NUNC PRO TUNC
	)	FINDINGS OF FACT,
-vs-	)	CONCLUSIONS OF LAW,
	)	ORDER and OPPORTUNITY
THE DEPARTMENT OF REVENUE	)	<u>FOR JUDICIAL REVIEW</u>
OF THE STATE OF MONTANA,	)	
	)	
Respondent.	)	

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**Statement of Case**

This is a property tax appeal brought by Norlene Brewer of a decision by the Lake County Tax Appeal Board (CTAB) on her Flathead Lake waterfront property. The subject property is 26230 Old US Highway 93 in Elmo, described as S16, T24, R21, TR 3 in Gov Lot 1 on H-1017. The Taxpayer represented herself before this Board and the Department of Revenue (DOR) was represented by Michele Crepeau, Tax Counsel. The case was heard on the record with the parties' statements, written submissions and the CTAB transcript considered by this Board

**Issue**

The issue is whether the DOR has properly valued the property.

**Summary**

Norlene Brewer is the Taxpayer in this proceeding and, therefore, has the burden of proof. Based on a preponderance of the evidence, the Board reverses the decision of the Lake County Tax Appeal Board.

### Evidence Presented

1. The subject property is a .295 acre parcel of land and improvements on Flathead Lake with 104 feet of shoreline. (DOR Additional Material to be Considered on Appeal, p. 1.)
2. The DOR initially placed a value of \$434,084 on the land and \$63,568 on the improvements for a total value of \$497,652. (DOR Additional Material to be Considered on Appeal, p. 2.)
3. Taxpayer filed a request for an informal review with the DOR, specifically challenging the description on the property record card as including a dock that was damaged and unusable. The DOR removed the dock from the valuation of the improvements and adjusted the quality grade of the home and garage. These adjustments reduced the improvement value by \$3,888 to \$59,680, and reduced the total value to \$493,764. (DOR Additional Material to be Considered on Appeal, p. 2.)
4. Taxpayer filed an appeal with the Flathead County Tax Appeal Board, requesting a value of \$459,600 total, with the land valued at \$419,600 and the improvements at \$40,000. (Property Tax Appeal Form.)
5. Taxpayer's grounds for appeal were "My property is much lesser in value than the neighboring properties which have far superior homes with greater front footage on Flathead Lake." (Property Tax Appeal form.)
6. At the CTAB hearing, Taxpayer was represented by Attorney Keith McCurdy and Taxpayer testified about her property. In her testimony, she challenged the DOR's description of the property on her property record card, claiming that she was being taxed on a non-functional boathouse as well as a storm-damaged dock. She stated that she had called the DOR after the dock was damaged in 1996 to request it be removed from her property tax records, though the dock itself has not

been removed or repaired. Her challenge to the valuation consisted of her testimony that she thought her neighbors had nicer houses and lower taxes. She presented no actual comparisons or sales data of any kind to challenge the DOR's valuation. (CTAB Transcript.)

7. The DOR, represented by Appraiser Monty Simonson, testified that the shed and dock had been removed from the property record card in the 2012 AB-26 informal review, and he reduced the grade of the improvements from "average" (5) to "fair" (4) to reduce the value of the house. The appraisal of the improvements was based only on the house and garage. (CTAB Transcript; Property Record Card, DOR Exh. A.)
8. Mr. Simonson presented a Land Valuation Model showing 16 property sales between 2006 and 2008 for Neighborhood 302.5 from which the DOR developed the average front-foot value of \$6,107.28 it applied to the subject property. Neighborhood 302.5 encompasses waterfront properties near Big Arm. He explained that the subject lot is small and not as deep as the standard lots in their analysis, so an adjustment was made which reduced the value to \$434,085, a 30 percent reduction. (DOR Exhs. F and G.)
9. Mr. Simonson also presented a Land Sales comparison, showing four comparable property sales from 2006 and 2007, each less than half an acre, valued at substantially higher front-foot values, ranging from \$5,466 to \$8,140 per front-foot, than the subject property valued at \$4,174 per front-foot. The Land Sales comparison was offered only as an example of selected similar properties that sold close to the lien date. (CTAB Trans., Exh. I.)

10. Mr. Simonson also noted that the DOR had no documented notice of the Taxpayer's request that the dock should be removed from the property description for tax purposes. (CTAB Trans.)
11. The CTAB lowered the land value to \$395,200, an amount \$24,400 lower than the amount requested by the Taxpayer, but did not adjust the value of the improvements. The opinion stated: "Not a very appealing lot at present. If remains of dock and boat house were removed it could be a very nice lot." (Property Tax Appeal Form.)
12. Taxpayer appealed to this Board, stating: " Info on 2012 property records wrong. Lake County used comparable property across the lake from me. The area here is considered the "least desirable" on lake as quoted by Lk. Cty appraiser. Property 2 lots down from mine with comparable lake frontage and acreage just sold for \$300,000." ( Property Tax Appeal Form.)
13. Taxpayer did not submit any additional materials to this Board for consideration in this appeal. The DOR submitted additional material, a summary of the case, for consideration. (Montana DOR's Additional Material to be Considered on Appeal.)

#### **Principles of Law**

1. The State 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. For the taxable years from January 1, 2009, through December 31, 2014, all class four properties must be appraised at its market value as of July 1, 2008. (ARM 42.18.124(b).)
5. The appraised value supported by the most defensible valuation information serves as the value for ad valorem tax purposes. (Rule 42.18.110(12), ARM.)
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.)

#### **Board Discussion, Findings of Fact, 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 2012.

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).

We find the Taxpayer failed to provide any evidence that the DOR value of her property is incorrect. The Taxpayer has submitted no evidence that challenges the DOR valuation or the procedures used. First, her appeal form simply states that nearby property recently sold for \$300,000, without providing any detail on which property or how comparable it might be to the subject

property. The values set by the DOR are as of July 1, 2008. 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. A “recent” sale, therefore, is unlikely to provide any useful comparison for a 2008 valuation.

Second, Taxpayer states that her property record card is incorrect but gives no details on what the problem might be. She further states that a property across the lake was used to value her land, but we find that all properties used are in the same DOR Neighborhood (*see* EP 8 above) and appear comparable by past sales activity. Her appeal at the CTAB was focused on the property record card, not the comparable properties or the valuation model used to value her property. The DOR testified the property record card had been corrected prior to the CTAB hearing and the house and garage are the only improvements being taxed. We find no evidence to the contrary.

Taxpayer also complained that the DOR did not remove the dock from her property record card when she called in 1996, but submitted no proof of that request. We note that, since that time, Taxpayer has received DOR assessment notices, in late 1996, 2002 and 2009, apparently showing the dock as part of the taxable value but she did not file a written request for a correction until 2012. We do not find that Taxpayer is entitled to a tax correction for past years for the failure to remove the dock.

We also find no evidence of a fault with the DOR’s valuation. The CTAB reduced the value of the land below the amount requested by Taxpayer, apparently because of the derelict boat house and damaged dock. We are unaware of an influence factor being used to reduce the value of land because

of deferred maintenance to auxiliary improvements and can find no other grounds in the case before us for the CTAB's reduction in value. The amount at issue is relatively small: the DOR establishes the value of the land as \$434,084 while Taxpayer asserts it as \$419,600, a difference of just \$14,484, or three percent. The CTAB's reduction in value was nine percent and this Board can find no evidence in the file on which to affirm that value. We order the DOR's value reinstated.

Thus it is the opinion of this Board that the assessed value set by the DOR is correct and the decision by the Lake County Tax Appeal Board is reversed.

Order

IT IS THEREFORE ORDERED by the State Tax Appeal Board of the State of Montana that the value of the subject property shall be entered on the tax rolls of Lake County at a 2012 tax year value of \$434,084 for the land and \$59,680 for the improvements, as determined by the Department of Revenue.

Dated this 22<sup>nd</sup> of March, 2013.

BY ORDER OF THE  
STATE TAX APPEAL BOARD



KAREN E. POWELL, Chairwoman



SAMANTHA SANCHEZ, Member



DAVID L. McALPIN, 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 March, 2013, 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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/s/ Donna Eubank Ryan  
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