

BEFORE THE MONTANA TAX APPEAL BOARD

**FILED**

JUN 16 2017

Montana Tax Appeal Board

CASE No: PT-2016-1

**JAMES S. FERGUSON,**

Appellant,

v.

**THE STATE OF MONTANA,  
DEPARTMENT OF REVENUE,**

Respondent.

**Findings of Fact,  
Conclusions of Law, Order,  
and Opportunity for Judicial  
Review**

1. Before the Board is Appellant James Ferguson's appeal from the Lake County Tax Appeal Board's (LCTAB) decision upholding the Respondent Montana Department of Revenue's (DOR) appraisal of a property located in Lake County described as 23607 Cedar Hills Lane, Cedar Hills Subdivision, in Dayton, Montana comprising 1.06 acres, and with the legal description Lot 6A-1, S02, T24N, R21W, geocode 15-3467-02-1-01-04-0000.
2. In this appeal Mr. Ferguson contests only the value of the land, contending that it is worth \$46,000. DOR, after reviewing its initial 2015 assessment of \$579,508 for the land, reduced the value it sought at

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the LCTAB hearing for tax years 2015 to 2016, to \$291,852. DOR initially appraised the improvements at \$327,072. After review and as part of the AB-26 process it reduced that value to \$316,720. See DOR Ex. Y, A, and B. The Lake County Tax Appeal Board affirmed the DOR values in a hearing in Polson on February 10, 2016. Taxpayer timely appealed to this Board.

3. This case has had a long and often times difficult course to the point of this decision. There were several delays in proceeding with a hearing before this Board which were requested by the Appellant and granted for good cause. There also appears to have been a misunderstanding of the appraisal methodologies used in the informal AB-26 and subsequent appeal process in Lake County and before this Board. This appeal is for tax year 2015 and our decision will apply to both tax years 2015 and 2016.

**ISSUE**

4. Whether DOR properly appraised Mr. Ferguson's land for tax years 2015 and 2016. Mr. Ferguson contends that the DOR improperly valued his lot as lakefront property or that it was valued as property for which he had lake access. Mr. Ferguson further claims that he has no access to the lake because he gifted a parcel to his now estranged wife who, as part of a bitter dissolution proceeding, has denied him access across the narrow strip of land that she owns between his lot and Flathead lake. Finally, he argues that even if the DOR appraised his lot not as lakefront property but as a property with a view of the lake, his value should be

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substantially lowered because other lots in the neighborhood have lake views and are appraised at a substantially lower value than his is.

**FINDINGS OF FACT**

5. The Board conducted a hearing on December 6, 2016 at 1:00 PM at 600 N. Park Ave., Helena at which the following were present:
  - a. James Ferguson, Taxpayer, appeared by telephone;
  - b. Patricia Bonilla, Mr. Ferguson's wife, as witness for the Taxpayer, appeared by telephone;
  - c. Nicholas Gochis, counsel representing DOR;
  - d. Cameron Johnson, DOR appraiser for Lake County, as witness for DOR;
  - e. Dan Lapan, DOR appraiser for Lake County, as witness for DOR;
  - f. Scott Williams, DOR area manager for Lake County, as witness for DOR.
  
6. The following exhibits were admitted:
  - a. Mr. Ferguson's exhibits;
    - Ex. 1 – 8/17/16 correspondence from Mr. Ferguson to DOR legal and a copy of Mr. Ferguson's Petition for Dissolution of Marriage (5 pages);

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Ex. 2 – 1/12/16 one page statement signed by Patti Bonilla Ferguson;

Ex. 3 –sworn statement of Patricia Bonilla aka Patricia Ferguson dated 3/24/16;

Ex. 4 – 8/17/16 correspondence from Mr. Ferguson to DOR legal;

Ex. 5 – sworn statement of Steve Oberg dated 9/12/16;

b. DOR exhibits;

Ex. A – Mr. Ferguson’s AB-26 Form and Decision;

Ex. B – Mr. Ferguson’s LCTAB Appeal and MTAB Appeal;

Ex. C – Mr. Ferguson’s property record card run date 1/14/16;

Ex. D (sealed) – Land valuation model for Lake county neighborhood 302.5;

Ex. E (sealed) – Realty transfer certificates for land model 302.5;

Ex. F (sealed) –Comparable sales map;

Ex. G – Comparable sales realty transfer certificates;

Ex. I – Photos of Mr. Ferguson’s property;

Ex. J – Photos of comparable #1;

Ex. K – Photos of comparable #2;

Ex. L – Photos of comparable #3;

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- Ex. M– Photos of comparable #4;
- Ex. N – Photos of comparable #5;
- Ex. O – Photos of Mr. Ferguson’s property and comparables;
- Ex. P – Mr. Ferguson’s deed and boathouse license agreement;
- Ex. Q – Mr. Ferguson’s boundary relocation survey;
- Ex. R - 5/29/01 correspondence from Mr. Ferguson to DOR;
- Ex. S – 5/31/09 correspondence from Mr. Ferguson to Lake County Assessor;
- Ex. T – Mr. Ferguson’s 2015 real property tax statement;
- Ex. U – Lot 7A 2015 real property tax statement;
- Ex. V – Lot 7A property record card;
- Ex. W – DOR memo regarding Villa Sites;
- Ex. X – Comparable sales report;
- Ex. Y – Mr. Ferguson’s property record card Run Date 12/5/16

**Procedural History**

7. Mr. Ferguson received his assessment notice for the 2015-2016 appraisal cycle and timely submitted an AB-26 application for informal review of the DOR’s property value. Mr. Ferguson submitted the form on August

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- 20, 2015. On the form, Mr. Ferguson contested the DOR's total value for the land and improvements in the amount of \$929,400, alleging a value of \$45,000 for the land and \$332,000 for the improvements for a total of \$377,000. DOR Ex. A.
8. The DOR made no changes at the AB-26 level review because market sales data supported the assessed value. *Id.*
  9. Mr. Ferguson appealed the AB-26 determination to the Lake County Tax Appeal Board (LCTAB) on October 29, 2015. DOR Ex. B.
  10. Prior to the hearing before the LCTAB, the DOR adjusted the value of both the land and improvements. The DOR reduced the value for the property's improvements to \$316,720 and reduced the value for the land to \$291,582. LCTAB Hrg. Transcr. 1:8 – 25, and 2:1 – 19.
  11. On January 20, 2016, the LCTAB held the hearing in this matter. After hearing the evidence, the LCTAB unanimously affirmed the values sought by the DOR and denied Mr. Ferguson's appeal of the value of the land. DOR Ex. B.
  12. Mr. Ferguson then timely appealed to this Board on February 10, 2016. *Id.*
  13. The record shows that there were a number of previously scheduled hearings in this matter. For good cause shown by the taxpayer, the Board vacated these hearings and rescheduled them.
  14. This Board finally heard this appeal on December 6, 2016.

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**Subject Property, Neighborhood, and Model**

15. When Mr. Ferguson purchased the property in question, the lot was subdivided as “Lot 6 and Lot 7.” MTAB Hrg. Transcr. 27:8 – 11.
16. Mr. Ferguson states he “never did any subdivision or dividing of lots or anything.” *Id.*
17. Instead, Mr. Ferguson testified that “All that I did on the advice of my next door neighbor, who is an insurance agent, is move the lot line between lot 6 and lot 7 down toward the lake because he told me that if all of my buildings were on the same property I could get a reduced insurance rate.” MTAB Hrg. Transcr. 27:11 – 16.
18. Mr. Ferguson had the property lines adjusted in March 2008. DOR Ex. Q.
19. In moving the property lines, Mr. Ferguson created the following lots: Lot 6A-1 and Lot 7A. DOR Ex. Q.
20. During the hearing before this Board, various witnesses referred to Lot 6A-1 as Lot 6A. These same witnesses also referred to Lot 7A as Lot 7. Where the testimony used the wrong lot description, this Board has used [*sic*] in an effort to avoid any confusion.
21. Mr. Ferguson owns Lot 6A-1, which is where his home is located. MTAB Hrg. Transcr. 53:14 – 16.
22. Mr. Ferguson gifted lot 7A to Ms. Bonilla on May 24, 2013 after the two wed. MTAB Hrg. Transcr. 15:15, 15:21 – 24, 32:20 – 23. Lot 7A abuts

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the lake, and is about six to eight feet wide running the entire length of Mr. Ferguson's property, and is about .02 acres. MTAB Hrg. Transcr. 32:20 – 23. *Id.*

**Mr. Ferguson's prior history with the DOR as to this property**

23. Mr. Ferguson had prior contacts with the DOR about the value of his lots.

24. On May 29, 2001, Mr. Ferguson sent the DOR a letter titled "Protest of assessment of Lot 6A-1 and Lot 7 [*sic*]." DOR Ex. R. In the letter, Mr. Ferguson said both lots were not assessed properly because:

That my two adjoining parcels were assessed as if they were one parcel. That the boundary between my parcels was re-surveyed and relocated prior to the most recent assessment. The boundary relocation resulted in a substantial reduction in size of my lakeshore parcel and there should have been a commensurate reduction in the assessed value of that parcel. The most recent assessment completely overlooked this substantial change in circumstances. DOR Ex. R.

25. Despite sending this letter, to the best of the DOR's knowledge Mr. Ferguson did not request an AB-26 review of the DOR's valuation. MTAB Hrg. Transcr. 43:4.

26. On May 31, 2009, Mr. Ferguson sent a letter to the DOR titled "Change in size of lake frontage property requiring re-assessment." In the letter Mr. Ferguson requested the DOR,

As a result of the boundary between the two parcels being relocated Lot 7A has been reduced in size and is



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now .02 acres having a width of 102.5 feet (lake frontage) and an average depth of approximately 6 feet. Lot 6A-1 is now 1.06 acres in total having increased in size by the same amount by which Lot 7 (now Lot 7A) decreased in size.

Please re-assess these 2 parcels bearing in mind the following facts: Lot 7A is no longer of sufficient size to allow either a sewage permit to be granted or to allow construction of even a very small building.

The purpose of the boundary relocation was to remedy the fact that some of the improvements (boathouse and winch shed) were previously on a parcel separate from the house. All of the improvements (except for a boat launch ramp) are now located on the same parcel, that being Lot 6A-1 (formerly Lot 6A).

Please re-assess these two lots in accordance with their new configurations. DOR Ex. S.

27. This letter resulted in a formal AB-26 review. MTAB Hrg. Transcr. 45:13-16.
28. According to Ms. Johnson of the DOR, “the appraiser at the time reviewed the property and lowered the value, but did not assess them separately and kept them as a combined unit. Previously the house had sat over the boundary line, and so [the DOR] always looked at that as one parcel. . . [B]ecause the ownership was still the same, the appraiser let him know that [the DOR] would continue to value the property as one shared unit.” MTAB Hrg. Transcr. 45:21 – 46:4.

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**Mr. Ferguson's position**

29. Mr. Ferguson asserts he does not have access to the lake and thus the property value of his lot should be reduced to account for his lack of access.
30. Mr. Ferguson did not undertake an independent appraisal of his property. MTAB Hrg. Transcr. 28:16 – 18.
31. Mr. Ferguson summarized his argument as:

The contention again at the county level, completely speculative, was that she and I had conspired in some fashion to reduce property taxes, and I am here now testifying under oath that that is not true. What has become a bitterly contested divorce has resulted in the fact that I've been told, both verbally and in writing, that I'm not allowed to trespass on Lot 7 [sic] at any time for any reason, and based on Montana law regarding trespass, it's illegal for me to set foot on Lot 7 [sic] for any reason. And even if I do, it's not access to Flathead Lake, it's trespass. Again, my sworn testimony is that I no longer have access to the lake. I guess that would complete my opening statement. MTAB Hrg. Transcr. 10:6 – 17.
32. Mr. Ferguson asserted "The [DOR's] assessment assumes that I have access across Lot 7 [sic.] to Flathead Lake. The current assessment assumes that." MTAB Hrg. Transcr. 35:14 – 16.
33. Ms. Bonilla testified she would not allow Mr. Ferguson access to her lot. MTAB Hrg. Transcr. 12:4 – 8.

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34. Ms. Bonilla testified that Mr. Ferguson's sailboat was temporarily on her property because Steve, her handyman, moved the boat in order to complete maintenance on her lot. MTAB Hrg. Transcr. 14:16 – 18.
35. On the lien date of January 1, 2014, Ms. Bonilla and Mr. Ferguson were married. MTAB Hrg. Transcr. 18:16 – 17. At the time of this hearing, the parties were still married and Ms. Bonilla had not been served with Mr. Ferguson's petition for dissolution of marriage "filed in Lake County and dated August 16, 2016." MTAB Hrg. Transcr. 23:23 – 25; MTAB Hrg. Transcr. 34:7 – 12.
36. Regarding lot 7A, which she owns, Ms. Bonilla stated, "I can't build anything on it, but it's still connected at the time as a package to the lake house." MTAB Hrg. Transcr. 20:4 – 6. As a result, Ms. Bonilla noted she has tried to sell her property, but "without having access to like the house, the property isn't worth anything to anybody." MTAB Hrg. Transcr. 20:13 – 16.
37. The assessment and appraisal notice for Ms. Bonilla's lot were mailed to Mr. Ferguson's P.O. Box and the taxes were paid from a joint account. MTAB Hrg. Transcr. 22:6 – 8, 30:11 – 13, 58:8 – 12, DOR Ex. T and U.
38. As to the comparable sales the DOR may have relied upon, Mr. Ferguson asserted his property should be valued the same as other lots in the Cedar Hills subdivision "that do not have lake access and are about the same size as [his] lot 6A [sic]." MTAB Hrg. Transcr. 81:23 – 82:4.

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**The DOR's Position**

39. DOR Appraiser Mr. Lapan explained how he valued Mr. Ferguson's lot.

40. Mr. Lapan stated he used the

GIS-based database that we can look at how both how properties are appraised and also we chronicle sales. So I was able to immediately tell what other lakefront properties in the area had sold, so essentially I started there. I also looked at the land valuation models to see what properties that sold made up the sales within that neighborhood. And that's actually the neighborhood breaks just north of Mr. Ferguson's property, so I looked at those sales as well." MTAB Hrg. Transcr. 68:10 – 17.

41. Stated simply, Mr. Lapan "looked at lakefront properties in the area . . . [as well as] non-lakefront properties in the area, because . . . [he] valued both [Ms. Bonilla's] frontage and Mr. Ferguson's Lot 6A [*sic*]. So [he] did it at the same time, and came up with what [he] felt was a fair value as compared to other properties in the neighborhood." MTAB Hrg. Transcr. 90:13 – 19.

42. When Mr. Lapan initially appraised Mr. Ferguson's lot, "even though there are two individual parcels, essentially [he] looked at the value of what that would be as one parcel since they were and are currently married, and essentially, unless that changes if it was sold, you know, until it sells, essentially that's how [he] would look at the value." MTAB Hrg. Transcr. 69:4 – 9.

43. Mr. Lapan discussed the unique nature of the lots here, stating "you can't easily go out and find parcels that have sold on Flathead Lake or for that

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matter on any other lake in the region that have the entire frontage and then three or, you know, three feet or six feet or eight feet of depth. That's just not something that is, you know, represented in the sales market." MTAB Hrg. Transcr. 69:11 – 16.

44. The DOR's Ex. X provided these comparables as a "sales grid . . . prepared for [the] hearing . . . to demonstrate the sales prices of both Wild Horse Island properties . . . and two villa lots that also technically do not own the lake frontage." MTAB Hrg. Transcr. 74:14 – 17.
45. The DOR presented evidence explaining the various aspects of Wild Horse Island lots and villa lots as they related to Mr. Ferguson's lot and its value.

**Wild Horse Island**

46. "The Wild Horse Island lots are circular lots that when they were originally subdivided they were purposely subdivided to not include lakefront." MTAB Hrg. Transcr. 73:15 – 20. Therefore, "the privately owned parcels on Wild Horse Island . . . do not own the lakefront." MTAB Hrg. Transcr. 73:11 – 12.
47. These Wild Horse Island "properties are less desirable than properties on the mainland . . . [because] they're boat access only . . . they have to create their own power grid." MTAB Hrg. Transcr. 80:14 – 19. Wild Horse Island properties "you can't access it in the winter. They have limited use. They have restrictions far greater than [Mr. Ferguson's property] does in respect that all the other pie shapes that are left out

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[on Wild Horse Island] are owned by the Nature Conservancy, so they have more restrictions on that as well about the ownership of all of their neighbors.” MTAB Hrg. Transcr. 102:4 – 8.

**Villa Lots**

48. A villa lot is a mainland property where the property owner does not own the lakefront. MTAB Hrg. Transcr. 73:10 – 12.

49. Villa lots arose, according to Mr. Williams of the DOR, because “back in the early 1900’s, [Congress] set aside these sites during the process of creating a reservation system in the United States of America. And what they did is that they set aside on Flathead lake these sites that could be developed. They left 50 feet of frontage as a setback that according to the Lake County Attorney . . . [the] setback is in case there’s water shortage within that area, so it’s non-deeded property, but it’s a setback that goes, I believe, from high water mark back to where the lots actual start and exist.” MTAB Hrg. Transcr. 97:22 – 98:5; *see also* DOR. Ex. W.

50. Villa lots, according to Mr. Williams, “sell . . . as if they have water frontage.” MTAB Hrg. Transcr. 100:12.

**Applying the comparable sales to value Mr. Ferguson’s lot**

51. Adjusting the Wild Horse Island lot sales and the villa lot sales, Mr. Lapan determined a one acre lot with a lake view, but where the owner did not actually own lakefront property, should be valued at \$325,000. MTAB Hrg. Transcr. 75:1 – 4.

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52. After the AB-26 and before the LCTAB, Mr. Lapan changed the DOR's description of Mr. Ferguson's property – and no longer valued lot 6A-1 as waterfront property. MTAB Hrg. Transcr. 71:5 – 7; 88:6 – 20.
53. Instead, Mr. Lapan “valued it as a view type property.” MTAB Hrg. Transcr. 71:9 – 11. This reduced the land value from \$579,508 to \$291,852.
54. Mr. Lapan “valued [lot 6A-1] using comparable sales of view lots in . . . [Mr. Ferguson's] neighborhood [and] an adjacent neighborhood.” MTAB Hrg. Transcr. 93:18 – 21.
55. Mr. Lapan then applied an influence of “200 percent on the V2 pricing” which is an upward adjustment to account for Lot 6A-1 having a superior view. MTAB Hrg. Transcr. 71:12 – 16.
56. Influence is defined as the “percentage increase or decrease of pricing in [the DOR's] land valuation model.” MTAB Hrg. Transcr. 71:22 – 23. The influence of 200 percent was the result of Mr. Lapan's “research . . . on what property was selling for in the area.” MTAB Hrg. Transcr. 72:1 – 2.
57. Using the per acre lot comparable sales with an influence of 200 percent on the V2 pricing for the view, Mr. Lapan reached a value for this lot of \$291,852. *Id.*; DOR Ex. Y.
58. Mr. Lapan addressed some properties which Mr. Ferguson relied upon before the CTAB. As to those properties, Mr. Lapan testified,

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First and foremost, [these properties] weren't properties that sold so they technically weren't comparables. . . [H]alf or more of them were located on the other side of Highway 93. In other words, opposite the lake. And then the remainder of them that were located on the side of the highway adjacent to the lake, none of them, there was at least one entire lot between the lakeshore and the lot that he was submitting, and we, as compared to his, Mr. Ferguson's lot, which essentially was . . . three feet, four feet, five feet, whatever . . . from the lake. MTAB Hrg. Transcr. 79:7 – 16.

59. According to Mr. Lapan, Mr. Ferguson's lot was superior to other Cedar Hills subdivision lots because of its "proximity to Flathead Lake." MTAB Hrg. Transcr. 82:11 – 14.
60. Regarding the other Cedar Hills subdivision lots, Mr. Lapan continued, "if you're looking at a lakefront property or properties adjacent to the lake, that the further you move from the lake, the less those properties are worth." MTAB Hrg. Transcr. 85:2 – 4, 85:11 – 13.
61. Mr. Williams of the DOR agreed with Mr. Lapan and noted "both of these lots together, if that line didn't exist, would be worth far more than the actual Lot 6A [*sic*] and 7A just added together right now." MTAB Hrg. Transcr. 102:18 – 21.
62. In the end, the DOR determined that Mr. Ferguson's "lot in itself and with the action of what has been done with the boundary adjustment, is more representative [of] an acre lot as opposed to a front foot lot." MTAB Hrg. Transcr. 106:10 – 12.



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63. In using the acreage method instead of the frontage method, Mr. Ferguson's lot was valued for less than it could have been valued. MTAB Hrg. Transcr. 107:1 – 4.
64. Ms. Johnson visited the property twice: on January 19, 2016 and August 12, 2016. MTAB Hrg. Transcr. 63:20 – 23; MTAB Hrg. Transcr. 64:14 – 15. When she visited the property on January 19, 2016 she did not “observe any obstacles obstructing Mr. Ferguson's use of the waterfront.” MTAB Hrg. Transcr. 64:20 – 22. Similarly, when she visited the property on August 12, 2016, she did not see any “obstacles obstructing” Mr. Ferguson's “use of the waterfront.” MTAB Hrg. Transcr. 65:6 – 7.
65. Mr. Lapan visited the property on August 12, 2016. MTAB Hrg. Transcr. 77:19; DOR Ex. N.
66. During his site visit, he did not notice any no trespassing signs on the property. MTAB Hrg. Transcr. 78:3 – 4. He also did not notice any obstacles which obstructed Mr. Ferguson's access to the lake. MTAB Hrg. Transcr. 78:6 – 10.

### CONCLUSIONS OF LAW

67. The Board has jurisdiction over this case and its order is final and binding upon all parties unless changed by judicial review. Mont. Code Ann. § 15-2-301.
68. To whatever extent the foregoing findings of fact may be construed as conclusions of law, they are incorporated accordingly.

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**Burden of Proof**

69. The taxpayer bears the burden of proving the error of DOR's value. *Farmers Union Cent. Exch., Inc. v. Dep't of Revenue of State of Mont.*, 272 Mont. 471, 476, 901 P.2d 561, 564 (1995); *Western Air Lines, Inc. v. Michunovich*, 149 Mont. 347, 353, 428 P.2d 3, 7 (1967).
70. However, DOR cannot rely entirely on the presumption in its favor and must present a modicum of evidence showing the propriety of their action. *Western Air Lines*, 149 Mont. at 353, 428 P.2d at 7.

**Assessment**

71. "All taxable property must be appraised at 100% of its market value...." Mont. Code Ann. § 15-8-111.
72. 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. Mont. Code Ann. § 15-8-111(2).
73. The Legislature has directed that the DOR use "a general and uniform method for purposes of appraising real property." Mont. Code Ann. § 15-7-103.
74. "For the taxable years from January 1, 2015, through December 31, 2016, all Class Three property (residential) must be appraised at its market value as of January 1, 2014." Mont. Admin. R. 42.18.124(1)(d).

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**Discussion**

75. This Board holds tax appeal hearings, in part, to assess and compare the credibility of both parties to tax appeals.
76. Mr. Ferguson has alleged that the DOR incorrectly valued his lot as waterfront property, which if so valued, employs a different methodology to reach fair market value than the acreage model, which is used for non-waterfront property. MTAB Hrg. Transcr. 10:6 – 17. The evidence does not support his assertion. The record is clear the DOR valued his lot as a view lot using the acreage model and did not value his lot as waterfront. MTAB Hrg. Transcr. 71:5 – 7, 88:6 – 20.
77. Mr. Ferguson's arguments about whether his 1.06 acre parcel is worth less than the appraised value because he is blocked from crossing Ms. Bonilla's six foot wide property running the length of the two lots while relevant is not determinative. It is overshadowed by the DOR's substantive, unrebutted testimony that the \$291,852 value was obtained by finding comparable sales of similarly situated view parcels which were used to compute a value for Mr. Ferguson's parcel. MTAB Hrg. Transcr. 71:12 – 16, 72:1 – 2, 75:1 – 4; DOR Ex. Y.
78. This Board finds the DOR adjusting Mr. Ferguson's lot for superior view is reasonable given his proximity to the lake.
79. Mr. Ferguson's further arguments that other lots in the same subdivision were valued far less than his is supported by reference to cadastral values and not actual sales. MTAB Hrg. Transcr. 81:23 – 82:4. DOR provided substantive testimony that even if the cadastral values were

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used, there were valid reasons for the differences in value for similarly sized lots located much further from the lake. MTAB Hrg. Transcr. 85:2 – 4, 85:11 – 13.

80. Lastly, Mr. Ferguson has had a number of explanations over the years for the boundary relocation of the property he initially purchased and treated as one unit. First, it was done on the basis of a recommendation of a neighbor who was an insurance agent, that if it were one property he would gain a reduction on his insurance premiums. MTAB Hrg. Transcr. 27:11 – 16. He sought and did not obtain any property tax relief. Next, the boundary relocation was done to avoid problems with one of the buildings resting on a property line. DOR Ex. S. Again, he sought property tax relief and did not receive it because the DOR told him the property was under one owner and it was a waterfront property. MTAB Hrg. Transcr. 45:13 – 16. Finally, after gifting the odd sized lot to his wife, he again sought property tax relief.

81. The evidence is clear that the two properties are assessed separately and the taxes levied against both Mr. Ferguson and Ms. Bonilla for their individually owned parcels. MTAB Hrg. Transcr. 22:6 – 8, 30:11 – 13, 69:4 – 9. Ms. Bonilla's lot is assessed as waterfront, while Mr. Ferguson's lot is assessed as a parcel close to or adjacent to the lake, with a superior view. MTAB Hrg. Transcr. 69:4 – 9, 90:13 – 19. There is unrebutted testimony in the record that the sum of the two individually owned parcels is less than if the two parcels owned by a married couple on the lien date of January 1, 2014 were assessed as one parcel. MTAB Hrg. Transcr. 102:18 – 21.

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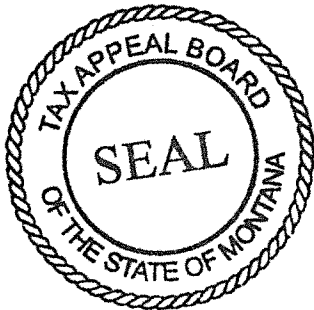
82. Based on the above, this Board finds Mr. Ferguson failed to meet his burden of proof establishing \$46,000 represents his lot's fair market value.
83. In contrast, the DOR presented sufficient evidence to uphold its lot value of \$291,852. The DOR used appropriate and similarly situated comparable sales to determine Mr. Ferguson's lot's value.
84. This Board, therefore, affirms the LCTAB's finding upholding the DOR's value of Mr. Ferguson's lot.

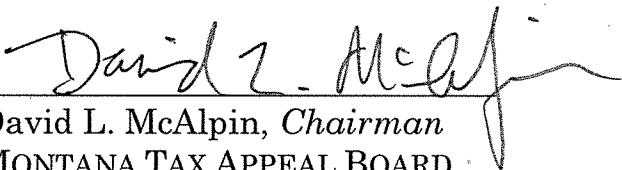
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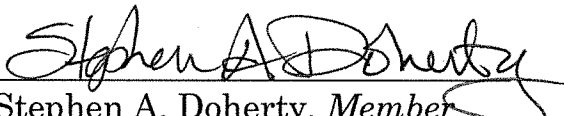
**ORDER**


85. Taxpayers appeal and complaint is **denied**.
86. It is therefore ordered that the subject property, geocode 15-3467-02-1-01-04-0000, shall be entered on the tax rolls of Lake County for the tax years 2015 and 2016, as follows: \$291,852 for the land and \$316,720 for the improvements.

Ordered June 16, 2017.



  
David L. McAlpin, *Chairman*  
MONTANA TAX APPEAL BOARD

  
Stephen A. Doherty, *Member*  
MONTANA TAX APPEAL BOARD

  
Valerie A. Balukas, *Member*  
MONTANA TAX APPEAL BOARD

**Notice:** You may be entitled to judicial review of this Order by filing a petition in district court within 60 days of the service of this Order. Mont. Code Ann. § 15-2-303(2).


BEFORE THE MONTANA TAX APPEAL BOARD  
FERGUSON v. DOR

**Certificate of Service**

I certify that I caused a true and correct copy of the foregoing *Findings of Fact, Conclusions of Law, Order, and Opportunity for Judicial Review* to be sent by United States Mail via Print and Mail Services Bureau of the State of Montana on June 16, 2017

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Lynn Cochran, Administrative Officer