

BEFORE THE STATE TAX APPEAL BOARD  
OF THE STATE OF MONTANA

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BRADLEY E. & PATRICIA A.	)	
GARNICK,	)	
	)	DOCKET NO.: PT-2003-67
Appellants,	)	
	)	
-vs-	)	FACTUAL BACKGROUND,
	)	CONCLUSIONS OF LAW,
THE DEPARTMENT OF REVENUE	)	ORDER and OPPORTUNITY
OF THE STATE OF MONTANA,	)	<u>FOR JUDICIAL REVIEW</u>
	)	
Respondent.	)	

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The above-entitled appeal was heard on April 20, 2004, in the City of Philipsburg, Montana, in accordance with an order of the State Tax Appeal Board of the State of Montana (the Board). The notice of the hearing was duly given as required by law.

Bradley Garnick, presented testimony on behalf of the taxpayers in support of the appeal. The Department of Revenue (DOR), represented by Larry Barrett, Appraiser, presented testimony in opposition to the appeal.

The duty of the Board is to determine the market value of the taxpayer's property based on the preponderance of the evidence. The State of Montana defines "market value" as **MCA §15-8-111. Assessment - market value standard - exceptions.**

(1) All taxable property must be assessed at 100% of its market value except as otherwise provided. (2)(a) Market value is a 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 a reasonable knowledge of relevant facts.

It is true, as a general rule, that the appraisal of the Department of Revenue is presumed to be correct and that 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. (Western Airlines, Inc., v. Catherine Michunovich et al., 149 Mont. 347, 428 P.2d 3, (1967)).

Based on the evidence and testimony, the Board finds that the appeal of the taxpayer shall be granted and the decision of the Granite County Tax Appeal Board shall be overruled.

#### FACTUAL BACKGROUND

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

2. The property which is the subject of this appeal is described as follows:

Land only described as Lot 25, comprising 4.12 acres, Phase V, Jericho Bay Subdivision, Georgetown Lake, County of Granite, State of Montana (Assessor ID number 0001454673).

3. For the 2003 tax year, the DOR appraised the subject land at \$135,000.
4. The taxpayers appealed the DOR's value to the Granite County Tax Appeal Board (County Board) citing the following reasons for the appeal, and requesting a value of \$80,000:

*My wife and I purchased lot 25 in the Jericho Bay subdivision in March of 2002 for \$73,000 from Bossard Realty, the developer of this subdivision. When we looked at the lot we purchased, Bossard Realty also had lot 22 listed for \$125,000 and Whaley Realty had lot 31 listed for \$159,000. These lots ended up selling for \$125,000 and \$150,000 respectively within several months of our purchase. The reason the same realtor advertised and sold us our lot for so much less is that the front 2/3 of the lot is low wet ground and when the property was subdivided, a drainage ditch was put in that empties onto our property from a large settling pond located on lots 23 and 24. The neighbors reported that this past spring, much of this area was under water. Another factor is the land that actually borders the lake adjacent to our lot is owned by the Forest Service.*

5. In its December 13, 2003 decision, the County Board denied the taxpayers' appeal.
  
6. The taxpayers then appealed the County Board's decision to this Board on January 20, 2003, for the reasons stated above in their appeal to the County Board.

**STATEMENT OF THE ISSUE**

The issue before the Board is the market value of the subject property as of January 1, 2002, the base appraisal date for the current appraisal cycle. The taxpayers are requesting that their March 2002 purchase price of \$73,000 be given consideration as the market value for ad valorem tax purposes, including an arbitrary inflation factor of approximately five percent per year, for a total requested value of \$80,000.

**TAXPAYER'S CONTENTIONS**

The taxpayer asserts that the subject property is a case where mass appraisal cannot address unique situations. He introduced a series of photographs depicting the boggy nature of the subject lot (Exhibit 7). In addition, Taxpayer's Exhibits 2-5 address sales information concerning the subject lot and neighboring lots.

He also directed the Board's attention to Section 15-8-111, MCA, (Taxpayers' Exhibit 1) which defines market value as:

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.

Mr. Garnick testified that he purchased the subject property for \$73,000 in March of 2002 from Bossard Realty. Bossard Realty was the developer of the subdivision in which the subject lot is located. In addition, Lot 22, Phase V, Jericho Subdivision, Georgetown Lake, was listed for sale at the time of the taxpayers' purchase for \$125,000. Lot 22 sold for \$125,000 on July 31, 2002. Lot 31 in this subdivision was listed for sale \$159,000 and sold for \$150,000 on June 10, 2002.

The subject lot is impacted by the presence of a drainage ditch leading from a settling pond located on Lots 23 and 24. This drainage ditch ends on the subject lot, impacting two-thirds of this lot nearest to Georgetown Lake. Any improvements built on this lot would need to be constructed towards the rear of the lot, away from the waterfront, and nearest the road. Exhibit 7 shows the presence of standing

water, especially near the lake, on the subject lot and its general state of "marshiness." The lake shore is very shallow and muddy. A dock cannot be constructed on the lake frontage and the only boat able to navigate to and from the shore of the subject lot is a canoe.

In addition, Forest Service boundary delineates government ownership of the land directly along the shoreline.

Mr. Garnick presented DOR appraisal records showing that Lot 31 (2.33 acres), which sold for \$150,000 in June of 2002, is appraised by the DOR at \$90,475 (Exhibit 11). Lot 22, approximately five acres, which sold for \$125,000 in July of 2002, is appraised by the DOR at \$155,075. (Exhibit 9) Mr. Garnick points to the discrepancies between DOR appraised value and actual sales price present in all three sales, including the sale of the subject. In summary, Mr. Garnick contends that his purchase price, an arm's length transaction meeting the definition of market value per Section 15-8-111, MCA, together with the negative impacts of the soggy ground caused, in part, by the drainage ditch ending on his property, and related building restrictions, warrant a reduction to his requested value of \$80,000.

### **DOR'S CONTENTIONS**

Mr. Barrett presented sales information (DOR Exhibit A) pertinent to the valuation of the subject lot. For Neighborhood #02 B, in which the subject is located, a base size of one acre was established and a base rate of \$57,000 for the first acre and \$25,000 for any remaining acreage was also established. In support of these values, Mr. Barrett presented data concerning vacant land sales, maps showing the location of the sales, time adjustments made to the sales to bring them to the base appraisal date of January 1, 2002, and the statistical analysis undertaken by the DOR's CALP (computer-assisted land pricing) model to determine the value for the subject and its neighborhood. Numerous photos were also presented, showing the presence of the drainage ditch discussed by the taxpayer.

### **BOARD DISCUSSION**

ARM 42.20.454 provides that the DOR may use the actual selling price of a property as a determinant of its value for ad valorem tax purposes. Neither party disputes that the transaction in which the taxpayers acquired the subject lot was arm's length. The record indicates that the subject is a

relatively inferior lot in relation to other lots in its subdivision and that fact is reflected in a lower purchase price and in that it was the last lot to sell. Its relative inferiority is evidenced by its boggy nature, the undesirable necessity of building away from the waterfront and near the road, and the presence of a drainage ditch dumping into the middle to two-thirds of the lot. The purchase took place in March 2002, very near the DOR's base appraisal date of January 1, 2002 for the current cycle.

The Board will, therefore, adopt the taxpayers' purchase price of \$73,000 as the market value of the subject lot for tax year 2003.

In addition, the Board finds the subject CALP model rather suspect in that it appears that large lots are severely punished with virtually no consideration given for economies of scale.

#### CONCLUSIONS OF LAW

1. The State Tax Appeal Board has jurisdiction over this matter. **§15-2-301 MCA.**
2. **§15-8-111 MCA. Assessment - market value standard - exceptions.** (1) All taxable property must be assessed at 100% of its market value except as otherwise provided.



3. **§15-2-301 MCA, Appeal of county tax appeal board decisions.** (4) In connection with any appeal under this section, the state board is not bound by common law and statutory rules of evidence or rules of discovery and may affirm, reverse, or modify any decision.
4. It is true, as a general rule, that the appraisal of the Department of Revenue is presumed to be correct and that 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. (Western Airlines, Inc., v. Catherine Michunovich et al., 149 Mont. 347, 428 P.2d 3, (1967)).
5. 42.20.454 CONSIDERATION OF SALES PRICE AS AN INDICATION OF MARKET VALUE
6. The Board finds that the evidence presented supports its conclusion that the decision of the Granite County Tax Appeal Board be overruled and that the appeal of the taxpayers shall be granted.

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**ORDER**

IT IS THEREFORE ORDERED by the State Tax Appeal Board of the State of Montana that the subject land shall be entered on the tax rolls of Granite County by the local Department of Revenue office at the value of \$73,000, as determined by this Board.

DATED this 26th day of April, 2004.

BY ORDER OF THE  
STATE TAX APPEAL BOARD

( S E A L )

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GREGORY A. THORNQUIST, Chairman

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JEREANN NELSON, Member

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JOE R. ROBERTS, 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 26th day of April, 2004, 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:

Bradley and Patricia Garnick  
2505 Highland Blvd.  
Bozeman, Montana 59715

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

Granite County Appraisal Office  
County Courthouse  
Philipsburg, Montana 59858

Steve Neal  
Chairman  
Granite County Tax Appeal Board  
P.O. Box 460  
Philipsburg, Montana 59858

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DONNA EUBANK  
Paralegal