

BEFORE THE STATE TAX APPEAL BOARD
OF THE STATE OF MONTANA

GARY LAUFER,)
) DOCKET NO.: PT-2006-4
)
 Appellant,)
)
 -vs-)
)
 THE DEPARTMENT OF REVENUE) FACTUAL BACKGROUND,
 OF THE STATE OF MONTANA,) CONCLUSIONS OF LAW,
) ORDER and OPPORTUNITY
 Respondent.) FOR JUDICIAL REVIEW

The above-entitled appeal was heard on March 13th, 2007, in Helena, Montana, in accordance with an order of the State Tax Appeal Board of the State of Montana (Board). The notice of the hearing was duly given as required by law.

Gary Laufer (Taxpayer), presented testimony in support of the appeal. The Department of Revenue (DOR), represented by Steve Huntington, Area Manager, Sallie Keener, DOR Appraiser, and Ty Typolt, Region 5 Supervisor, presented evidence and testimony in opposition to the appeal.

The duty of this Board is to determine the appropriate market value for the property based on a preponderance of the evidence.

The Board allowed the record to remain open for a period of time for the purpose of receiving post-hearing submissions from both parties.

FACTUAL BACKGROUND

1. The State Tax Appeal Board has jurisdiction over this matter pursuant to § 15-2-301 MCA.
2. Due, proper, and sufficient notice was given of this matter, of the hearing, and of the time and place of the hearing. All parties were afforded opportunity to present evidence, oral and documentary.
3. The subject property is a two acre tract of residential land described as follows:

Lot 14 of the Pronghorn Hills Subdivision in the NE¹/₄, SE¹/₄ of Section 3, Township 9 North, Range 3 West, P.M.M. Jefferson County, Montana. Geo Code 51-1785-03-1-02-29-0000. (Exh. 2).

4. Only the land value is being appealed. The land was originally appraised by the DOR for a value of \$38,000. (Exh 2).
5. The Taxpayer filed a Request for Informal Review (AB-26) with the Department of Revenue on May 30, 2006, stating:

Almost ½ of my property is unusable due to road encroachments and other public use easements.

6. The DOR completed a field review and denied the Taxpayer's request for a reduction in the land value:

Based on the sales review your request for a reduction in land value is denied. (Exh. 1).

7. The Taxpayer filed an appeal with the Jefferson County Tax Appeal Board CTAB on July 27, 2006, requesting a total land value of \$19,000. (Appeal Form).
8. On September 27, 2006, the CTAB heard this appeal. At the hearing, the DOR notified the Taxpayer and the CTAB that the Department had again reviewed their appraisal of the subject property. The DOR had used sales in the Pronghorn Subdivision to determine that the Taxpayer's lot is subject to a negative influence of 20% due to the road easements. DOR thus reduced the appraised value of the lot from \$38,000 to \$30,400. (Testimony of Mr. Laufer and Ms. Keener).
9. In its September 27, 2006, decision, the county board denied any further reduction from the \$30,400 value, stating:

DOR has adjusted property value of 2.0 acres from \$38,000 to \$30,400. We feel this adjustment reflects easement of Capital Drive. The final value of land and building of \$149,620 is less than the purchase price. (Appeal Form).

10. The Taxpayer appealed that decision to this Board on September 29, 2006, citing the following reason for appeal:

Value was not adjusted to reflect true value. County board ignored evidence proving this property is un-usable by me for any purpose. (Appeal Form).

11. The Taxpayer requested from this Board an appraised value of \$15,000 for his lot because half of his lot is unusable due to public use easements. (Testimony of Mr. Laufer).
12. In March 2006, the Taxpayer purchased the subject property and the improvements on it. In April 2006, the Taxpayer was locating property lines in preparation for building a garage when he discovered that the easements and setbacks restricted the area in which he could build. (Testimony of Mr. Laufer).
13. The Taxpayer received an assessment notice in May, soon after discovering the extent to which the usable portion of his property was restricted by easements. The DOR assessment notice set the land value at \$38,000. (Testimony of Mr. Laufer).
14. The Taxpayer testified that the subdivision covenants stipulate that parcels may not be less than two acres in size; all road and utility easements in this subdivision are within the individual lots. (Testimony of Mr. Laufer).

15. The Taxpayer contends that, even though he had purchased two acres of land, about one acre is unusable due to road and utility easements on the property. The easements include a 120 foot easement for Capital Drive on the northeast edge, a 30 foot easement for Holmes Gulch Road on the northwest edge, and a 30 foot easement for Wild Turkey Road on the southwest edge of the property. (Board Exh. 1).
16. The DOR used a CALP (Computer Assisted Land Pricing) model to establish the original value of \$38,000 for the subject property. The CALP is based on vacant land sales, in this case 96 different sales. The CALP sales and the subject property are all located in Neighborhood 12, which is a geographic area designated by the DOR. Based on the CALP, the DOR set one acre as the base size for a parcel in Neighborhood 12. In addition, the DOR determined that the value of the base acre was \$36,500 and the value of each residual acre was \$1,500, again based on the CALP. (Testimony of Sally Keener; Board Exh. 2).
18. To determine if the market value of the subject property is negatively influenced by easements, the DOR analyzed the sales of two properties in the Pronghorn Hills

Subdivision. The subject is one of those properties and has road easements on three sides. The other property is irregularly shaped with road easements on two sides. (Board Exh. 1).

19. The DOR compared the sales prices of the two negatively influenced properties with the sales prices of several other properties sold in the Pronghorn Hills subdivision from May 2002 to June 2005. The other properties are not impacted as much by road easements. Based on this analysis, the DOR reduced the subject valuation by 20%. (Board Exh. 3).

BOARD DISUSSION

The Board recognizes that the appellant cannot use a portion of his property for certain purposes due to easements, but the DOR is charged with appraising the property at full market value pursuant to § 15-8-111, MCA. The best way to determine market value is to use the actual sale of the property or to extract data from the market. The DOR used a CALP which is based on sales of vacant parcels in the area surrounding the subject property. In this case, the CALP indicated a value of \$36,500 for the first acre and \$1,500 for the residual acre. Thus the subject property was

originally valued at \$38,000 for the two acres.

The subject property is negatively influenced by easements which restrict the use where the easements are located. The DOR recognized this, though belatedly, and determined that the value of the lot should be reduced 20% due to the negative influence of the easements. In this case, the DOR used sales of two parcels, one of them the subject lot, to identify the negative influence of the easements on the value of the subject lot. Consequently, the DOR reduced the assessed value of the property to \$30,400.

In determining whether the DOR value is correct, STAB may consider the actual selling price of the property as evidence of the market value of the property. Section 15-7-102(6), MCA. The subject property actually sold for \$29,900 in June 2003, eighteen months after the assessment date. The record does not contain any evidence on which to base a time adjustment to the subject's sales price. However, the Board has no reason to believe that the value of the property **decreased** from the assessment date to the sales date eighteen months later. In the Board's opinion, the June 2003 sale of the subject property occurred close enough to the appraisal date to be the most accurate indication of market value available for the subject lot.

The Board recognizes that the post-lien date sale of the subject lot was not available to the DOR on the assessment date for this appraisal cycle. Insofar as the record indicates, however, the lot did not exist until after that assessment date and the very first sale of the lot is the one that occurred in June 2003. The CALP, a tool of mass appraisal, will provide an appropriate valuation for most property, but there will always be exceptions. Mr. Laufer's property is one of the exceptions and the initial sales price demonstrates that. Accordingly, the Board has determined that the appraised value of the lot should be \$29,900.

The appeal of the Taxpayer is granted in part and denied in part and the decision of the Jefferson County Tax Appeal Board is modified.

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 Jefferson County by the local Department of Revenue office at the value of \$29,900. The decision of the Jefferson County Tax Appeal Board is modified.

Dated this 29th day of May, 2007.

BY ORDER OF THE
STATE TAX APPEAL BOARD

(S E A L)

KAREN E. POWELL, Chairwoman

SUE BARTLETT, Member

DOUGLAS A. KAERCHER, 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 29th day of May, 2007, 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:

Gary R. Laufer
3 Wild Turkey Road
Clancy, MT 59634

Sally Keener
Jefferson County Appraisal Office
P.O. Box H
Boulder, MT 59632-0249

Ty Typolt
Region 5 Supervisor
2273 Boot Hill Court, Suite 100
Bozeman, MT 59715

DONNA EUBANK
Paralegal