BEFORE THE STATE TAX APPEAL BOARD
OF THE STATE OF MONTANA

DONNA E. ROTH, Appellant, -vs- THE DEPARTMENT OF REVENUE OF THE STATE OF MONTANA, Respondent.	DOCKET NOS.: PT-2010-12 and PT-2010-13 FACTUAL BACKGROUND, CONCLUSIONS OF LAW, ORDER and OPPORTUNITY FOR JUDICIAL REVIEW

Donna E. Roth (Taxpayer) appealed the decision of the Lake County Tax Appeal Board (CTAB) relating to the Department of Revenue's (DOR) valuation of two parcels located at 34259 Yellow Pine Lane in Polson.

Taxpayer argued that the DOR overvalued her property and sought a reduction in the value. At the hearing in Helena on May 10, 2011, Taxpayer was represented by her husband, Urban Roth, and licensed appraiser Mark McDonald. The DOR was represented by Michele Crepeau, Tax Counsel, Appraiser Jim Bach, and Area Manager Scott Williams.

The Board having fully considered the testimony, exhibits, and all matters presented, 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 2009.

Summary

Based on a preponderance of the evidence, the Board modifies the decision of the Lake County Tax Appeal Board.

Evidence Presented

1. The subject property is Lots 5 and 6, Skidoo Villa Estates, S07, T25 N and 25N, R19 W. The two lots are contiguous and each has 100 feet of frontage on Flathead Lake. (Property Record Cards, DOR Exhs. D and E.)
2. Both lots have homes on them, the values of which are not at issue in this appeal. The older structure on Lot 6, a log cabin, is used as a guest house by the Roths and the newer, larger structure on Lot 5 is their home. The parcels of land are each valued at $806,840 so that, together with the improvements, the lots have a total value of $2,244,984. (DOR Exhs. D and E.)
3. Taxpayer requested an informal review of her appraisal on September 28, 2009, stating that the 2009 valuation represents a 400% increase in valuation, other lake front property is valued much lower, sales on the Lake have slowed, and the values have dropped. (DOR Exh. B, AB-26 form.)
4. An on-site review was conducted on May 19, 2010 by DOR appraiser Bach who made corrections in the property record cards, moving the newer structure to Lot 5 and adding a dock not previously shown on either property. The original value for both properties increased from $2,232,399 to $2,244,984 as a result of that addition. (DOR Exh. B.) No reduction in value was made and the two lots were not combined, as Taxpayer requested at the informal review, to produce a lower total valuation. (DOR Exh. B.)

5. By letter of June 4, 2010, Taxpayer questioned the DOR about combining the lots. On June 14, 2010, Scott Williams responded explaining §15-8-307(2), MCA, does not require the DOR to combine properties but rather permits combination when appropriate. "Most commonly this occurs if there is no discount for the combination and if one or the other lot is encumbered by improvements and or deed restrictions and must be sold together." Mr. Williams explained that though the lots are contiguous, they are legally separate, part of a subdivision, and can be sold separately. He stated it would be inappropriate and inequitable to offer a discount based solely upon the manner in which they are held. He advised that Taxpayer can choose to have the lots resurveyed and replatted to form one lot. (DOR Exh. C, Letters of June 4, 2010 and June 14, 2010.)

6. Taxpayer filed a timely appeal with the Lake County Tax Appeal Board requesting a reduced value on both lots and both dwellings: the land to be reduced from $804,840 to $194,820 in each case, the home on Lot 5 reduced from $551,552 to $428,550 and the log cabin on Lot 6 from $79,752 to $60,000. Taxpayer stated her reasons for appeal as the DOR's failure to appraise the two lots as one, disputing the comparables used by the DOR, and claiming there are comparable sales with a front foot value closer to $4,000 than the $8,068 used by the DOR in valuing their land. (DOR Exh. A, Property Tax Appeal Forms.)

7. The Taxpayer argued the properties have several shared improvements, such as the well and septic, and the power and cable come to the property on Lot 6 and are used by the house on Lot 5. They argued their adjacent neighbor has two lots that are taxed as one.(Tr. p.31)

8. The DOR argued the shared well, drain field, and power cables do not prevent the parcels from being sold separately. Mr. Williams testified that shared wells are not uncommon. (Tr. p. 38.)

9. The DOR presented information on four comparable sales of nearby properties showing average front foot values in excess of the subject property. (Land Sales Comparison, DOR Exh. J.)

10. The Lake County Tax Appeal Board denied the appeal stating they "deemed the DOR appraisal to be fair and just." (DOR Exh. A, Appeal Forms.)

11. Taxpayer filed a timely appeal with this Board and submitted an extensive Memorandum in Support of the Appeal which primarily focused on two points. First, the property should be valued as a single tract of land under existing statute and case law. Second, the comparables used by the Department to value the land were not good comparables. (Appeal Forms.)

12. Taxpayer argued that the comparables used by the DOR did not properly take the improvements into account when valuing the land in the Land Sales Comparison. (Roth Exh. R.) Had the Department done so, subtracting the improvement values reported in the 2009 tax valuations published on the State's property tax web site (Cadastral), the front-foot average cost would have been far lower than the $8,068 used in valuing the subject property. (Memorandum in Support of Appeal, p.7.)

13. The Montana Cadastral website is managed by the State of Montana GIS department which periodically pulls property tax data from the DOR and provides it to the public. The DOR has noted in past cases that it

cannot vouch for the accuracy of the GIS data. It is, however, the only electronic data available to Taxpayers to review other properties.

14. The Taxpayer noted, for example, in comp. #4, the DOR lists the land value as $907,015 ($7,374 per front foot) although the cadastral web site lists the land value $660,148 ($5,173 per front foot.) One property, comp. # 2, not shown as lakefront property, is valued on an acre basis rather than lake frontage and so is not comparable to the subject property. (Memorandum in Support of Appeal, p.10.)

15. Taxpayer also presented cadastral data about the immediate neighbors of her property, showing a wide disparity of valuation. The adjacent parcel is also two lots, 251 feet of lakefront, valued at $1,085,028 or $4,287 per front foot. Taxpayer disputes the cadastral listing of front footage of another neighbor as being understated at 100 feet when it is really 150 feet. However, even at 100 feet, the per-foot value is $6,577, considerably less than the subject property. (Memorandum in Support of Appeal, p.10.)

16. Taxpayer also challenged the DOR calculations of her property value in the Land Valuation Formula presented by the DOR. (DOR Exh. I.) The formula adjusts the land value for the depth of the lot as compared to the standard depth for which the front-foot rate is usually applied. In Taxpayer's case, her properties are described as 314 feet deep, compared to the standard 370 feet, resulting in a depth adjustment factor of .92, i.e., 92% of the usual rate.

17. Taxpayer submitted a plat map of the immediate neighborhood (Roth Exh. 1F) which indicates that the depth of Lot 6 is 251 feet and Lot 5 is an average of 282.5 feet.

18. By using the DOR valuation formula, the depth adjustment for the two lots, using those measurements and the DOR valuation formula, would be .825 and .87 respectively. The front foot values, corrected, would then be $7,235 for Lot 6 and $7,630 for Lot 5 and the land values would be $723,500 and $763,000 respectively instead of the $806,800 for each of the subject lots.

19. Taxpayer also submitted a list of shared improvements or features of the subject properties that argue for treating them as one parcel:

    a. an electric generator set on a concrete pad that spans the boundary of the parcels services both properties as a backup source of electric power;
    b. a shared well, drain field and septic system;
    c. the sprinkler system services both lots with the pump on one lot and controls in both houses;
    d. a dock located on Lot 5, but accessed from Lot 6;
    e. access to the lake by motor vehicle is only on Lot 6;
    f. electric power and cable television come to the property from Lot 6. (Memorandum in Support of Appeal, pp.3-6.)

20. The DOR presented the computer assisted land pricing (CALP) model for the Taxpayer's neighborhood, 300.A, which was used to value lakefront property on a front-foot basis. The sales prices of the 14 properties sold in 2006, 2007 and 2008 were adjusted to remove the buildings and improvements and time trended to the statutory valuation date of July 1, 2008. (DOR Exh. H.)

21. Mr. Williams testified that the prices were trended at .5% per month only up to July of 2007 because the market started to decline after that. As a result, the influence factor normally calculated for water-front

property was not used. The average front-foot value for the first 100 feet was $8,693. Mr. Williams stated that the land sales comparison criticized by the Taxpayer was not used to value the property but was presented at the CTAB hearing for comparative purposes.

22. Mr. Bach testified that the shared improvements did not make the combination of the lots mandatory as the houses do not span the property line or encroach on the setback requirements so the parcels cannot realistically be sold separately. Mr. Bach further stated the parcels could be sold separately by dividing the shared improvements or creating easements.

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. Montana statutes define individual parcels of land and the method of combining them.

> "Tract of record" means an individual parcel of land, irrespective of ownership, that can be identified by legal description, independent of any other parcel of land, using documents on file in the records of the county clerk and recorder's office.
> (b) Each individual tract of record continues to be an individual parcel of land unless the owner of the parcel has joined it with other contiguous parcels by filing with the county clerk and recorder:
> (i) an instrument of conveyance in which the aggregated parcels have been assigned a legal description that describes the resulting single parcel and in

> which the owner expressly declares the owner's intention that the tracts be merged; or
> (ii) a certificate of survey or subdivision plat that shows that the boundaries of the original parcels have been expunged and depicts the boundaries of the larger aggregate parcel. §76-3-103(16) MCA.

5. The DOR may also elect to treat multiple parcels as one property.

> If the department receives the written consent of all persons with an ownership interest, the department may assess multiple parcels or tracts of land with common ownership collectively as a single tract of land. §15-8-307 (2).

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.

7. The Montana Supreme Court has defined the process by which a taxpayer can show inequality in assessment and has reaffirmed it in subsequent cases. Taxpayer must show (1) there are several other properties within a reasonable area similar and comparable to the subject property; (2)the amount of assessments on these properties; (3) the actual values of the comparable properties; (4) the actual value of the taxpayer's property; (5) the assessment complained of; and (6) that be a comparison the taxpayer's property is assessed at a higher proportion of its actual value than the ratio existing between the assessed and actual valuations of the similar and comparable properties, resulting in discrimination. *Dept. of Revenue v. State Tax Appeal Board*, 188 Mont. 244, 613 P.2d 691 (1980), cited with approval, *DeVoe v. Dept. of Revenue*, 233 Mont. 190, 759 P. 2d 991.

8. As long as a taxpayer's property is not overvalued in the reappraisal process, he cannot secure a reduction in his own appraisal on the grounds that another taxpayer's property is under appraised. *Patterson v. Dept. of Revenue,* 171 Mont. 168, 557 P.2d 798 (1976)

Findings of Fact, Conclusions of Law and Board Discussion

The Taxpayer in this case asks the Board to order the Department to treat her properties as aggregated without having to suffer the expense and disadvantage of actually aggregating them. We find her arguments that the shared improvements, such as the well, sanitary and sprinkler systems, and the backup generator, not persuasive as elements of a mandatory aggregation of the parcels by the Department of Revenue for tax purposes, when the Taxpayer has failed to legally combine the lots.

While the law does not require the DOR to combine the lots for tax valuation, the evidence does demonstrate that the individual parcels have sufficient disadvantages due to the sharing of necessary amenities, such as the sanitary system and well, that an adjustment to the market value is appropriate. The DOR valued the subject lots by comparing the sales prices of lots without those deficiencies, but a purchaser would have to modify the subject properties to make them comparable to other parcels by contracting for use of neighboring septic and water or installing new systems. Thus, the properties each suffer certain deficiencies that should be reflected in determining their fair market value. As the value of the improvements is not at issue, a 10% reduction in the value of each lot is ordered.

The Taxpayer also claimed a disparate tax treatment in comparison to the neighboring properties. The DOR did not explain the disparate treatment of the Taxpayer's property compared to her closest neighbors, whose land and lakefront appear to be nearly identical but nonetheless appear to have much lower valuations on the photocopies presented of state's cadastral website. Even if the subject land were valued as one parcel, the front-foot rate would still be significantly higher than the adjacent

properties. While the Taxpayer did not carry the burden of proof laid out in *State Tax Appeal Bd.* and *DeVoe* cases referenced above, the facts presented and not refuted by the DOR evidence a questionable pattern of inequality.

While Roth makes a reasonable claim that her neighbors' properties appears to be differently valued than hers, there is insufficient evidence to determine whether that claim constitutes a Constitutional violation. It is possible the neighboring lots have been aggregated, or that a structure crosses the lot lines, but no evidence was presented by the DOR despite the fact that the issue arose at both the CTAB hearing and the Board hearing. In fact, in part because the DOR failed to address the issue, this Board does not have sufficient evidence to make that determination. Further, it is unclear as to whether the Department may be inconsistent or arbitrary in its determinations regarding aggregation of lots for tax purposes. *See Manicke v. DOR*, PT 2005-5 (discussing this exact concern in Lake County.) This Board would note that the inconsistency demonstrated by the Taxpayer rightly requires the DOR review valuations on certain other lake-front property (specifically the neighboring Taylor lots), as well as their internal policy on valuation of adjacent lots owned by the same entity, in light of the Department's requirement to equalize value under the Montana Constitution, §15-8-111(1) and (3), MCA, and §15-8-601, MCA (requiring reassessment when property has been erroneously assessed or omitted from taxation), to determine whether the Taylor lots, and other similar properties, have been assessed and aggregated according to law.

Finally we note that the Taxpayer has made claims, supported by credible evidence not refuted by the DOR, that incorrect measurements were used in valuing her land and the land of her neighbors on Finley Point, making the average front-foot value artificially high, and understating the

depth adjustment factor. We therefore direct the DOR to recalculate the total subject properties' value using the appropriate depth adjustment factors. This Board orders that the resulting corrected value will be the basis for the 10 percent reduction for single-lot deficiencies noted above.

Order

IT IS THEREFORE ORDERED by the State Tax Appeal Board of the State of Montana that the subject properties' values shall be entered on the tax rolls of Lake County at a 2009 tax year value in accordance with the directives of this Board, as outlined above.

Dated this 2nd day of June, 2011.

BY ORDER OF THE
STATE TAX APPEAL BOARD

/s/_____
KAREN E. POWELL, Chairwoman

(S E A L) /s/_____
DOUGLAS A. KAERCHER, Member

/s/_____
SAMANTHA SANCHEZ, 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 t his Order.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 2nd day of June, 2011, 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:

Donna E. Roth 34259 Yellow Pine Lane Polson, Montana 59860	_x_ U.S. Mail, Postage Prepaid __ Hand Delivered __ E-mail
Scott Williams Jim Bach Lake County Appraisal Office 3 - 9th Ave. W. Polson, MT, 59860	_x_ U.S. Mail, Postage Prepaid __ Hand Delivered __ E-mail __ Interoffice
Michelle R. Crepeau Office of Legal Affairs Department of Revenue Mitchell Building Helena, Montana 59620	__ U.S. Mail, Postage Prepaid __ Hand Delivered __ E-mail _x_ Interoffice
Louise Schock, Secretary 53780 Schock Lane Lake County Tax Appeal Board St. Ignatius, Montana 59865 (via U.S. Mail)	

/s