

BEFORE THE MONTANA TAX APPEAL BOARD

FILED

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Montana Tax Appeal Board

LAVONNE SANDERS,

Appellant,

v.

STATE OF MONTANA,
DEPARTMENT OF REVENUE,

Respondent.

CASE No: PT-2017-4

FINDINGS OF FACT,
CONCLUSIONS OF LAW, ORDER,
AND OPPORTUNITY FOR JUDICIAL
REVIEW

Before the Montana Tax Appeal Board is Appellant Lavone Sanders' appeal from the Yellowstone County Tax Appeal Board (YCTAB) decision valuing the land co-owned by her and Shane Sanders as joint tenants with rights of survivorship (Sanders), identified by geocode 03-1034-19-1-20-50-0000, at \$500,031. For the reasons provided in the Conclusions of Law, Ms. Sanders' appeal is granted and their land for the 2016 tax year is valued at \$199,675.

ISSUE

This Board must determine whether Ms. Sanders presented sufficient evidence to overcome the DOR's value of the Sanders' 11.41 acre land located in the flood fringe.

When the Sanders purchased their land in November of 2010, the land was not located within the flood fringe of the floodplain of the Yellowstone

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River. On November 6, 2013, thus 56 days before the January 1, 2014 lien date for the 2015 and 2016 two year appraisal cycle, new Federal Emergency Management Agency (FEMA) maps were issued that included the Sanders' land within the flood fringe. A property in the flood fringe has certain restrictions when it comes to developing the property. These restrictions, according to the Sanders justify a reduction in their land's value.

Ms. Sanders submitted into the record an independent fee appraisal completed for this appeal. The appraisal calculated market reductions for property in the flood fringe. Based on this data, the appraiser determined the Sanders' land had a market value of \$199,675.

The DOR requested this Board maintain the YCTAB's value of \$500,031 for several reasons. First, the DOR claimed a property located in the flood fringe does not have sufficient building restrictions to warrant a reduction in value. Second, the DOR asserted its land sales model did not reveal that flood fringe property has a lower market value than nonflood fringe properties.

FINDINGS OF FACT

Description of the Property

1. The land involved in this appeal is legally described as follows:
Parcel 1A, Amd (09) of C.O.S. 1346, S19, T01N, R27E
with a common address of 1401 Johnson Lane,
Billings, MT, geocode 03-1034-19-1-20-50-0000.
2. The Sanders' land is 11.41 acres and zoned as heavy industrial. DOR Ex. A; Taxpayer Ex. 1, p. 7, 28. The land has standing water. MTAB Hrg. Transcr. 8:12 – 13 (July 6, 2017); Taxpayer Ex. 1, p. 10, 11, 30 –

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31. Due to the standing water and soil conditions, the land has sanitary restrictions that increases the cost to develop land. MTAB Hrg. Transcr. 11:9 – 15; Taxpayer Ex. 1, p. 30 – 31.
3. A radio tower was built on the land in 2008. MTAB Hrg. Transcr. 24:20 – 21. The radio tower as well as some other personal property on the land are owned by KGHL Radio LLC, a company owned by Taylor Brown. DOR Ex. A; Taxpayer Ex. 4; YCTAB Hrg. Transcr. 24:6 – 9 (December 23, 2016); MTAB Hrg. Transcr. 57:1 – 10. This personal property is taxed separately from the Sanders' land and is not part of this appeal. *Id.*
4. KGHL Radio LLC leases the land from the Sanders. DOR Ex. D. MTAB Hrg. Transcr. 19:18 – 25. The lease, entered into on January 23, 2008, includes the following monthly rent term:
- Monthly rent shall be \$2,500 per month for the first twelve (12) months of the Term. The Monthly Rent shall be increased, on July 1, 2008 and on July 1 of each year during the Term thereafter, by an amount equal to three percent (3%) over the previous year's Monthly Rent. DOR Ex. D, p.2.
5. On November 1, 2010, the Sanders purchased this land for \$430,000. MTAB Hrg. Transcr. 22:17; DOR Ex. B. The purchase included an assignment of the 2008 lease. Taxpayer Ex. 1, p. 32; MTAB Hrg. Transcr. 26:22 – 24. When the lease terminates, the rights and interests in the personal property, including the radio tower, are

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surrendered to the Sanders. MTAB Hrg. Transcr. 23:15 – 24; YCTAB Hrg. Transcr. 16:23 – 17:3; DOR Ex. D, p. 4.

6. On November 6, 2013, FEMA released a new floodplain map for the area which placed the Sanders' land within the flood fringe. Taxpayer Ex. 1, p. 33.
7. For the 2008 to 2014 appraisal cycle, a six-year cycle, the DOR valued the Sanders land at \$180,652. DOR Ex. A; MTAB Hrg. Transcr. 36:21 – 37:4.
8. For the 2015 and 2016 appraisal cycle, a two year cycle, the DOR valued the Sanders' land at \$539,350; an increase of \$358,698, or 198 percent, from the prior appraisal cycle. DOR Ex. A; MTAB Hrg. Transcr. 36:21 – 37:4.

AB-26 – appeal and outcome

9. On or about November 18, 2015, Ms. Sanders requested an AB-26 review of the DOR's assessment. DOR Ex. A, p. 8.
10. Due to the timing of the request, the DOR's AB-26 review only applied to the 2016 tax year. DOR. Ex. A, p. 8 -13. The AB-26 review concluded on October 14, 2016 with no reduction in value. YCTAB Property Tax Appeal Form (November 5, 2016); DOR Ex. A, p. 12 – 13.

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CTAB – appeal and outcome

11. On or about November 5, 2016, Ms. Sanders appealed the DOR's AB-26 determination to the YCTAB. *Id.* Ms. Sanders requested the DOR's value be reduced to \$180,561; i.e., the land's value during the 2008 to 2014 appraisal cycle. YCTAB Hrg. Transcr. 3:10 – 12; DOR Ex. A, p. 4.
12. On December 23, 2016, the YCTAB heard the appeal. YCTAB Hrg. Transcr. 1 – 2:8.
13. Before the YCTAB, Tom Llewellyn represented the Sanders. YCTAB Hrg. Transcr. 2:8 – 9.
14. Mr. Llewellyn asserted the properties the DOR relied upon were not comparable properties. Instead, he argued that,

The comps are primarily down here and when they get out here they got water to Peterbilt and to Pacific Hide and Fur, or whatever they call it now. And they are on septic, but they are on high ground where they can have septic. And this is all part of their uh, what they used for their comps. And the comps they used also included going down here by Lockwood Square with the Verizon Plus, which is a retail development with both water and sewer. This area has both water and sewer. And their comps have both water and sewer and the uh, when I redid it says water is available, means public water or there is sewer not available if they have septic and that's where they are at. So non-public facilities is where this piece of property really sits. It has no ability to get public land or water or sewer to it at this particular time. YCTAB Hrg. Transcr. 13:9 – 21.

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15. Because the Sanders' land lacked water or septic and cannot readily have water or septic, Mr. Llewellyn claimed most of the properties the DOR used to value the Sanders' property were not comparable. YCTAB Hrg. Transcr. 14:1 – 16:2.
16. Given these restrictions, Mr. Llewellyn concluded the Sanders' land had a value of \$110,000. YCTAB Hrg. Transcr. 19:1 – 2.
17. The DOR valued the Sanders' land by taking the sales prices of vacant land in the area and then adjusting those sales prices based on the market conditions and trends since the sale to the lien date of January 1, 2014. YCTAB Hrg. Transcr. 27:21 – 28:4; 33:11 – 20. The DOR did this “so that you are comparing apples to apples.” *Id.*
18. Using the adjusted land sales prices, the DOR created a model that determined the base rate value for the first acre of the Sanders' land was \$175,000 and a “residual rate at \$35,000 per [each additional] acre.” YCTAB Hrg. Transcr. 33:19 – 20.
19. The DOR's land model calculated that the 11.41 acres of land had a value of \$539,350. YCTAB Hrg. Transcr. 23:13 – 14.
20. The DOR's witness testified that property located in the flood fringe does not have the same building code restrictions that a property located in the flood way does. YCTAB Hrg. Transcr. 32:9 – 24. Thus, the DOR did not make any adjustment to the property's market value to reflect its location within the flood fringe. *Id.*

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21. The YCTAB reduced the DOR's value to \$500,031. YCTAB Hearing Transcr. 47:7 – 8. The YCTAB culled this figure from the DOR exhibit which listed \$500,031 as the time adjusted increase to the January 1, 2014 lien date of the Sanders' purchase price of \$430,000 in November 2010. DOR Ex. B; YCTAB Hrg. Transcr. 43:6 – 12.
22. On January 30, 2017, Ms. Sanders appealed the YCTAB decision to this Board. The DOR did not appeal the YCTAB's decision.

MTAB Hearing

23. This Board conducted a hearing at the Montana Tax Appeal Board office located at 600 North Park Avenue, Helena, MT, at 1:00 p.m. on July 6, 2017.
24. At the hearing, Ms. Sanders was represented by co-owner Shane Sanders. MTAB Hrg. Transcr. 3:1 – 8. Mr. Sanders testified. The following witnesses also testified in the Sanders' case:
 - a. Co-landowner LaVonne Sanders; and
 - b. Lessee Taylor Brown, an owner of KGHL Radio LLC which owns the personal property on the Sanders' land.
25. This Board admitted the following exhibits submitted by Ms. Sanders:

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- a. Taxpayer Ex. 1: Fee Appraisal Report Effective Date January 1, 2014 prepared by Charles R. Rutherford M.A.I. (dated April 17, 2017);
 - b. Taxpayer Ex. 2: “Billings Radio Tower – Tax Appeal” signed by Lavonne Sanders (dated December 18, 2016);
 - c. Taxpayer Ex. 3: Department of Revenue Tax Appeal Hearing Ms. Sanders CTAB Argument Outline; and
 - d. Taxpayer Ex. 4: Property Tax Statements for the KGHL Radio Tower (dated May 12, 2017).
26. At the hearing, the DOR was represented by Anthony Zammit. The following witness testified in the DOR’s case:
- a. Commercial Appraiser, Cindy Zindler.
27. This Board admitted the following exhibits submitted by the DOR:
- a. DOR Ex. A: MDOR Assessment Information packet (confidential pursuant to Mont. Code Ann. § 15-7-308; MTAB Hrg. Transcr. 34:16 – 18);
 - b. DOR Ex. B: Land Model Sales Information (confidential pursuant to Mont. Code Ann. § 15-7-308; MTAB Hrg. Transcr. 34:24 – 35:1);
 - c. DOR Ex. C: Utility & Access Easement (dated June 6, 2008);

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- d. DOR Ex. D: Ground Lease (dated January 11, 2008);
 - e. DOR Ex. E: Map showing the subject property and some of the properties from the DOR's land sales model;
 - f. DOR Ex. F: Amended Certificate of Survey (dated January 3, 2008); and
 - g. DOR Ex. G: Assignment of Ground Lease (dated November 1, 2010).
28. In his opening statement, Mr. Sanders summarized his appeal:
- We are not looking to avoid being taxed but we are not willing to accept valuation that is far above what the market supports and is in fact a case of double taxation in our opinion. The subject property has obvious physical and legal characteristics that would impede and almost certainly preclude any potential development of the property. It is in a flood plain. It has sanitary restriction imposed upon it which prevent it from having any sort of development potential . . . It has adverse soil conditions which would present load bearing issues and drainage problems. It has a high water table in the area as evidenced by the ponds and small riparian area. MTAB Hrg. Transcr. 5:9 – 18.
29. To support his position, Mr. Sanders relied on appraiser Charles Rutherford's fee appraisal of the Sanders' land. Ex. 1; MTAB Hrg. Transcr. 6:2 – 13.
30. The fee appraisal was completed on April 17, 2017, but valued the subject land as of January 1, 2014; the DOR's lien date for the purpose

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of this appeal. Taxpayer Ex. 1, p. 1 and 14. Ms. Sanders sent a copy of this appraisal report to the DOR on or before June 15, 2017, pursuant to the exhibit exchange deadline set forth in this Board's scheduling order of March 9, 2017. MTAB Hrg. Transcr. 6:1 – 6; 6:23 – 7:11; 15:17 – 25; 16:3 – 4.

31. Mr. Rutherford is a member of the Appraisal Institute. Ex. 1 at p. 58. He has been “engaged in appraising since 1972 [and has been] employed in various staff appraisal positions and as an independent fee appraiser in Billings, Montana since 1975.” *Id.*
32. Mr. Rutherford's fee appraisal sought to determine the market value of the Sanders' land, which is now located in the flood fringe, by calculating the market effect of land located in the floodplain. *Id.* at 32 – 33. He did this by reviewing comparable sales and paired sales to determine what necessary adjustments he needed to make to his comparable land sales to obtain an accurate price per acre to value the Sanders' land. *Id.* at 42 – 47.
33. The fee appraisal noted the FEMA floodplain maps were finalized on November 6, 2013. *Id.* at 33. The Sanders' land was located outside the floodplain at the time the Sanders purchased it in 2010. *Id.*
34. According to Mr. Rutherford, the change in the FEMA maps imposed the following restrictive effect on development of property located in the flood fringe:

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Development within the flood fringe may be allowed by permit along with exceptional and additional construction requirements along with flood insurance. A variance or waiver from the minimum development standards of the floodplain regulations may be allowed in accordance with Section 12. This section provides the application requirements, notice requirements and evaluation criteria of the variance application. Depending on the proposed use compliance with the variance or waiver process may not be financially feasible and is subject to uncertain results. *Id.* at p. 36.

35. After noting how the FEMA maps would affect the development of certain property, Mr. Rutherford located five vacant lot comparable sales to use as a starting point for deriving market value for the Sanders' land:
- a. Land Comp 1: A 39.98 acre floodplain land sale on March 9, 2017 for \$550,000.
 - b. Land Comp 2: A 10.77 acre nonfloodplain land sale on September 27, 2013 for \$600,000.
 - c. Land Comp 3: A 23.58 acre nonfloodplain land sale on January 30, 2012 for \$1,027,000.
 - d. Land Comp 4: A 4.00 acre nonfloodplain land sale on September 29, 2011 for \$175,000.
 - e. Land Comp 5: A 18.56 acre nonfloodplain land sale on August 1, 2011 for \$610,000. *Id.* at p. 42.

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36. Mr. Rutherford then adjusted the value of these five Land Comps depending on the market conditions and trends pursuant to each sale, as follows:

In my opinion, the Land Comps 4 and 5 warrant an upward market condition adjustment to the effective date of this analysis or 1/1/2014, but none thereafter. As already discussed Land Comps 2 and 3 exhibit the highest prices in this area for parcels of their size due to strong buyer motivation so they are not adjusted for market conditions. It is unusual to include Land Comp 1 which took place about thirty-eight months after the effective date of this analysis, but it is the only acreage sale identified that is located within the flood fringe that is similar to the subject with the exception of size. Because prices do not appear to have change (sic.) dramatically since January 1, 2014, Land Comp 1 is considered indicative of market value at that time. *Id.* at p. 43.

37. To then determine whether to apply another market adjustment to a floodplain property, Mr. Rutherford examined floodplain property sales and nonfloodplain property sales of vacant lots from 1996 to 2017.¹ *Id.* at 44. He took these sales and paired them with one of the five comparable sales. *Id.*
38. According to Mr. Rutherford, these paired sales revealed a property located in the floodplain required a market value adjustment within a

¹ Flood fringe properties are floodplain properties, as explained in this decision's Conclusions of Law.

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range of “-29% to -67/77%.” *Id.* at p. 46. Mr. Rutherford decided “the floodplain/flood prone adjustment for the subject should fall near the upper end of the indicated range at -60%” based on his review of the floodplain properties he examined. *Id.*

39. Mr. Rutherford then reduced each of the comparable sales outside of the floodplain by 60 percent. *Id.* at 47. He asserted that reducing those nonfloodplain sales by 60 percent then reflected what those property values would be if they had been floodplain property. *Id.* Properties located within the floodplain were not adjusted because those prices should reflect the market value of a floodplain property. *Id.*
40. This resulted in the comparable sales having the following adjusted costs per acre values: \$13,757, \$22,278, \$17,422, \$19,873, and \$15,059 or a range of \$8,500 between the high and the low. *Id.* at p. 42, 47. Averaging these costs per acre, Mr. Rutherford determined the Sanders’ land had a value of \$17,500 per acre and thus a total value of \$199,675. *Id.* Mr. Rutherford then rounded the value up to an even \$200,000. *Id.*
41. Cindy Zindler has worked for the DOR for thirty years. MTAB Hrg. Transcr. 32:7. She has worked as an appraiser for twenty years. MTAB Hrg. Transcr. 32:11. She has valued commercial properties for the “last twelve to fifteen years.” MTAB Hrg. Transcr. 32:14. She has undertaken “IAAO, International Association of Assessing officers

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- training for both residential and for commercial as well as testing that goes on after that.” MTAB Hrg. Transcr. 33:3 – 6.
42. According to Ms. Zindler, the DOR can appraise a property using the cost approach, the market approach, and the income approach. MTAB Hrg. Transcr. 35:7. Ms. Zindler repeatedly testified that the DOR appraised the Sanders land using the cost approach. MTAB Hrg. Transcr. 35:4; 35:10; 38:1 – 9; 54:16; 55:20 – 25; 56:8 – 16.
43. However, during her testimony, what Ms. Zindler described was a market approach to valuing the Sanders’ land. MTAB Hrg. Transcr. 38:1 – 39:13; DOR Ex. B. She described that the DOR used time adjusted verified vacant land sales, regressed into a model, to apply [market value] to the subject properties within a neighborhood. MTAB Hrg. Transcr. 52:20 – 21.
44. None of her testimony could be construed or described as using a cost approach for valuing the Sanders’ land. *See* MTAB Hrg. Transcr. 54:10 – 14.
45. Ms. Zindler explained that the land model for the neighborhood was developed using 10 sales of vacant land which occurred in the neighborhood between July 2008 to September 2013. Ex. B; MTAB Hrg. Transcr. 37:7 – 10; 38:5 – 9. The DOR adjusted the actual sales price from the sale date to the January 1, 2014 statewide lien date by

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considering market conditions and trends. DOR Ex. B. In adjusting the actual prices to the January 1, 2014 statewide lien date, the value of all of the reported sales prices increased. *Id.* After adjusting the sale prices to the January 1, 2014 lien date, Ms. Zindler testified that the vacant land sales ranged from \$30,403.77 per acre to \$112,328.65 per acre – a range of approximately \$82,000 – or \$.70 per square foot up to \$2.58 per square foot. DOR Ex. B; MTAB Hrg. Transcr. 39:11 – 13.

46. The DOR determined the property values in this neighborhood for the current appraisal cycle using a 1 acre base model plus residual. MTAB Hrg. Transcr. 38:5. Ms. Zindler testified that

... [t]he sales that were used to create that model were mathematically analyzed by our modelers and a regression analysis was done by them and then reviewed by the appraisers for anything we saw that might be extreme. Your extreme highs and lows are thrown out. The general typical section is left in and the value is established. MTAB Hrg. Transcr. 38:5 – 9.

47. Using this data and the resultant DOR model, Ms. Zindler determined the Sanders' land had a market value of \$539,350 as of January 1, 2014. MTAB Hrg. Transcr. 38:1 – 9.
48. As to its land sales model, the DOR did not introduce its computer assisted land pricing (CALP) spreadsheet. Therefore, the DOR did not present evidence of how it time adjusted the sales and the basis for its adjustments.

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49. Ms. Zindler stated the Sanders land value had increased significantly from the prior appraisal cycle because of the passage of time. MTAB Hrg. Transcr. 37:1 – 4. She provided no further testimony about the Yellowstone County real estate market during those six years to explain the 198 percent increase in the Sanders' land value.
50. All of the market sales data relied upon by the DOR to create its neighborhood model occurred prior to the change in the FEMA maps on November 6, 2013. *See* DOR Ex. B.
51. None of the DOR's sales used to generate its land sales model were properties located in the floodplain at the time of their sales. *Id.*
52. Ms. Zindler testified that if the new FEMA floodplain maps did affect property market values in Yellowstone County, the market and the land sales model will reflect those changes in future appraisal cycles. MTAB Hrg. Transcr. 43:11 – 14; 45:19 – 20. However, as of January 1, 2014, the DOR's model did not indicate that properties located in the flood fringe had a lower market value. MTAB Hrg. Transcr. 45:19 – 20.
53. To corroborate the accuracy of the market value derived by the DOR's model, Ms. Zindler completed a simplified income approach for the property. MTAB Hrg. Transcr. 36:6 – 10. For her income approach, Ms. Zindler

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... took the lease information (*see* DOR Ex. D) I found and created a spreadsheet that would show the projected income it would produce and it validated. Let me rephrase that, it indicated that this land lease would definitely recapture and purchase price was premium beyond as well as the access at the end of the lease. Triple advantage. MTAB Hrg. Transcr. 35:24 – 36:3.

54. Like the CALP spreadsheets, the DOR did not admit into evidence the income model spreadsheets Ms. Zindler created.
55. Ms. Zindler testified that she did not reduce the Sanders' land value for being in the flood fringe because:
 - a. "The flood fringe we had not found that the fringe has any significant impact on what can be built and the parcels there. If it was in the flood plain, yes, severe restrictions." MTAB Hrg. Transcr. 43:12 – 14.
 - b. "The [FEMA] regulations went into effect in November of 2013, which would be past the time frame of when we were assessing that property for that year. So, the first time they could affect evaluation for us would be January of 14, which is also the date of our new appraisal cycle, but the sales for those were from the past cycle."² MTAB Hrg. Transcr. 47:15 – 47:19.

² As noted in the Conclusions of Law, Ms. Zindler testified incorrectly here and was confused about the lien date and when the FEMA maps became effective.

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- c. “In our sales analysis, we have not been able to determine a significant difference of sales of parcels that are in the fringe and those that are out.” MTAB Hrg. Transcr. 45:1 – 3.
56. According to Ms. Zindler, DOR appraisers do reduce the value of a vacant lot located in the floodplain, but not properties located in the flood fringe. MTAB Hrg. Transcr. 50:23 – 51:8. She did not know how much of a reduction the DOR would apply to a vacant lot located in the floodplain to reach market value. *Id.*
57. Ms. Zindler stated she could not testify to the contents of the Sanders independent fee appraisal because she had “not had time to study [the appraisal], [it] was not presented at the County Tax Appeal Board, and this is the first time I’ve seen it.” MTAB Hrg. Transcr. 49:20 – 21.
58. To whatever extent the following conclusions of law may be construed as findings of fact, they are incorporated accordingly.

CONCLUSIONS OF LAW

59. To whatever extent the foregoing findings of fact may be construed as conclusions of law, they are incorporated accordingly.
60. Ms. Sanders’ appeal of the YCTAB decision as to the 2016 tax year was timely filed before this Board and this Board has jurisdiction to hear and decide this matter. *See* Mont. Code Ann. § 15-2-301(1)(b).

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61. “In connection with any appeal under [Mont. Code Ann. § 15-2-301], 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. To the extent that this section is in conflict with the Montana Administrative Procedure Act, this section supersedes that act.” Mont. Code Ann. § 15-2-301(5).

Burden of Proof

62. “As a general rule, . . . the appraisal of the DOR is presumed to be correct and the taxpayer must overcome this presumption. The Department of Revenue should, on the other hand, bear a burden of providing documented evidence to support its assessed values.”
Workman v. The Department of Revenue of the State of Montana, 1997 WL 37203, *1 (Mont.Tax.App.Bd.), *citing Western Airlines, Inc. v. Catherine J. Michunovich, et al*, 149 Mont. 347, 428 P.2d 3, (1967).
63. Consistent with the above, the DOR must present credible evidence “to justify increasing the appraised value of [the taxpayer’s] property by an amount in excess of 100 percent from one appraisal cycle to the next.”
Devoe v. Dept. of Revenue of State of Mont., 263 Mont. 100, 113, 866 P.2d 228, 236 (1993) (affirming the holding of the District Court).
64. The appraised value supported by the most defensible valuation information serves as the value for ad valorem tax purposes. Mont. Admin. Reg. 42.18.134, formerly Mont. Admin. Reg. 42.18.110(12);

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Rainbow Senior Living of Great Falls v. Montana Department of Revenue, 2013 WL 6062167 (Mont.Tax.App.Bd.); *Keck v. Montana Department of Revenue*, 2013 WL 2476838 (Mont.Tax.App.Bd.).

65. The taxpayer has the burden to show the DOR's appraisal should be reduced. Mont. Code Ann. § 26-1-401; *Baitis v. Department of Revenue of the State of Montana*, 2004 MT 17, ¶28, 319 Mont. 292, 302, 83 P.3d 1278, 1284.

Assessment

66. "All taxable property must be assessed at 100 percent of its market value except as otherwise provided." Mont. Code Ann. § 15-8-111(1).
67. "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)(a).
68. This Board, upon hearing a tax appeal, may increase or decrease a property value to ensure the property is "assessed at 100 percent of its market value." *See Puget Sound Energy Inc. v. State Dept. of Revenue*, 2011 MT 141, 255 P.3d 171; and *O'Neill v. Department of Revenue*, 2002 MT 130, 49 P.3d 43.

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Independent Appraisals

69. “The state tax appeal board must consider an independent appraisal provided by the taxpayer if the appraisal meets standards set by the Montana board of real estate appraisers and the appraisal was conducted within 6 months of the valuation date. If the state board does not use the appraisal provided by the taxpayer in conducting the appeal, the state board must provide to the taxpayer the reason for not using the appraisal.” Mont. Code Ann. § 15-2-301(3).

Clarifying Floodplain, Floodway, and Flood Fringe

70. The following terms were confusingly used before the YCTAB and this Board: flood fringe, floodplain, and floodway.
71. The Sanders’ land is located in Yellowstone County. MTAB Hrg. Transcr. 2:13 – 23. This Board reviewed the Yellowstone County Floodplain Regulations for the definitions of floodplain, flood fringe, and floodway. *See* MTAB Hrg. Transcr. 44:20 – 24 (Ms. Zindler states “the county has . . . on their website they have a place you can go and look at the new regulations and restrictions.”)
72. The Yellowstone County Floodplain Regulations define “floodplain” as “the area of the Regulated Flood Hazard Area including and adjoining the watercourse or drainway that would be covered by the floodwater of a Base Flood. The area is partitioned into a Flood Fringe and Floodway where specifically designated.” *See* Regulated Flood Hazard Area.”

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Yellowstone County Floodplain Regulations, p. 10, available at:
<http://www.co.yellowstone.mt.gov/floodplain/AdoptedRegulations.pdf>
(accessed on July 7, 2017).

73. “Flood Fringe” is defined as “the identified portion of the Floodplain of the Regulated Flood Hazard Area outside the limits of the Floodway.”
Id.
74. Properties in the floodplain, whether in the flood fringe or the floodway, will have certain building restrictions requiring the property owner to obtain permits for any property improvements. Yellowstone County Floodplain Permits, available at:
<http://www.co.yellowstone.mt.gov/floodplain/permits.asp> (accessed on July 7, 2017); *see also* Taxpayer Ex. 1, p. 30 – 31.
75. Therefore, the floodplain includes both flood fringe and floodway. A flood fringe property will have fewer restrictions and less stringent permitting requirements than a floodway property. *See* John Connors, “Building a House in the Floodplain” (Mont. DNRC 2014), available at:
http://dnrc.mt.gov/divisions/water/operations/docs/floodplain/training/seminars/2014/building_house_floodplain.pdf (accessed on July 7, 2017). But both flood fringe and floodway properties are within the floodplain and have restrictions unlike a property outside of the floodplain. *Id.*

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Conclusions

76. First, this Board finds the DOR has not met its burden supporting its value.
77. The DOR did not provide sufficient evidence supporting its property value or explain why the Sanders land value for this cycle increased by \$358,000 or 198 percent from the prior appraisal cycle. *Devoe*, 263 Mont. at 113.
78. The time adjusted sales prices the DOR relied upon to create the land model used to value the Sanders' land had a wide market value disparity, with prices per acre from \$30,403.77 to \$112,328.85; a range of approximately \$82,000 per acre. While a range of \$82,000 per acre from the sale of 10 different vacant lots may not be on its own concerning, the DOR never explained why there was such a large range in the prices per acre; i.e. what about the market generated such a large range in the prices per acre, why the prices per acre did not need to be adjusted further to represent various market conditions, and lastly why this Board should accept the DOR's value and data given the large disparity in price per acre.
79. Related to the inadequacies in the data presented, the DOR did not introduce or provide the CALP model used to generate its market values for this property. The CALP would have provided insight into the model and the market data used and further explained the monthly

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rate of change that resulted in a \$358,000 increase in value over six years. Without it, this Board lacked sufficient information to support the DOR's 198 percent increase in Sanders' land from the prior appraisal cycle.

80. The DOR also failed to provide its spreadsheet and calculations related to an income model review it used to verify its value determined by the market sales approach. *See supra* ¶¶47, 53. This Board, therefore, does not know whether Ms. Zindler used the income method to corroborate her market sales approach or if her income approach may have influenced her market sales approach.
81. On three occasions Ms. Zindler provided testimony which undermines her credibility and thus weakened the already spartan evidence the DOR presented.
82. Ms. Zindler confusingly testified that the Sanders' land had been appraised using the cost approach. *See supra* ¶41. The cost approach is also known as replacement cost new less depreciation. Given a CALP was used, the DOR used the market sales approach and not the cost approach to value the property.
83. Ms. Zindler also incorrectly testified that the FEMA maps and regulations could be ignored because they were not in effect at the time of this appraisal cycle's January 1, 2014 lien date. *See supra* ¶54(b). Ms. Zindler's misunderstanding about the FEMA maps and the

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appraisal cycle lien date meant she never adequately explained why the FEMA maps and flood fringe were not considered, and instead simply asserted the FEMA regulation changes did not apply to this appraisal cycle because, according to her, they were issued after the lien date. *See supra* ¶54.

84. Lastly, Ms. Zindler provided confusing testimony on flood fringe property and the market effects of flood fringe property. As already noted above, under Yellowstone County ordinances flood fringe falls within the floodplain. Flood fringe property has restrictions and must meet certain requirements before any improvements are made on the property. Ms. Zindler's testimony downplayed the permitting and sanitary restrictions for a property in the flood fringe because, according to her, those restrictions are for floodplain property; thus, seemingly unaware that flood fringe property is located within the floodplain. *See supra* ¶55 above. The Board is not sure whether Ms. Zindler's testimony should be construed to mean: (1) flood fringe property should be adjusted and reduced; or (2) she confused flood fringe, floodplain, and flood way. This ambiguity undermines the credibility of her testimony.

85. Second, this Board finds Ms. Sanders met her burden by presenting a thorough and credible independent fee appraisal prepared by Mr. Rutherford specifically for the purposes of this tax appeal. *See supra* ¶29.

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86. Mr. Rutherford has significant experience, as he has been a licensed appraiser for more than forty years. *See supra* ¶30.
87. Based on Mr. Rutherford's appraisal, the November 2013 change to the FEMA map does affect "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)(a).
88. Unlike the DOR, Mr. Rutherford explained how the market trends affected Yellowstone County land values and thus why certain land sales had to be adjusted because of that market. He explained how a property's market value is affected by a property being in the flood fringe. After adjusting the comparable sales based on the land's characteristics and for being in the flood fringe, he yielded data showing all of the vacant lot comparable sales were fairly close in value with costs per acre of \$13,757, \$15,059, \$17,422, \$19,873, and \$22,278; or a range of approximately \$8,500 per acre. This conclusion sharply contrasts with the DOR's \$82,000 per acre variance in its land model.
89. The DOR also failed to even testify about, much less rebut, Mr. Rutherford's appraisal even though Ms. Sanders sent the DOR a copy of the appraisal at least three weeks prior to the hearing date consistent with the Board's Scheduling Order.

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ORDER

1. Ms. Sanders' appeal is **granted**. This Board, finds Ms. Sanders met her burden of proof, supported by an independent fee appraisal completed for this appeal, to show the DOR's property value of the Sanders' land should be reduced.
2. For the 2016 tax year, the DOR is ordered to value the Sanders' land, identified by geocode 03-1034-19⁴-1-20-50-0000, at \$199,675.

Ordered August 18th, 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).

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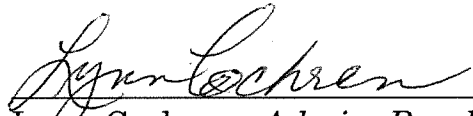
Sanders v. Montana Dept. of Revenue

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 August 18, 2017 to:

LaVonne Sanders
2400 Durston Rd. #45
Bozeman, MT 59718

Anthony Zammit
Montana Department of Revenue
Legal Services Office
P.O. Box 7701
Helena, MT 59604-7701



Lynn Cochran, Admin. Paralegal
MONTANA TAX APPEAL BOARD

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