

BEFORE THE IDAHO BOARD OF TAX APPEALS

|                   |   |                       |
|-------------------|---|-----------------------|
| JACOB BEHRENS AND | ) |                       |
| ROB BEHRENS,      | ) |                       |
|                   | ) | APPEAL NOS. 17-A-1038 |
| Appellant,        | ) | and 17-A-1039         |
|                   | ) |                       |
| v.                | ) | FINAL DECISION        |
|                   | ) | AND ORDER             |
| BONNER COUNTY,    | ) |                       |
|                   | ) |                       |
| Respondent.       | ) |                       |
|                   | ) |                       |

**VACANT LAND APPEALS**

These appeals are taken from value decisions of the Bonner County Board of Equalization modifying protests of valuation on two (2) properties described by Parcel Nos. RPP00000112286A and RPP00000112252A. The appeals concern assessments for the 2017 tax year.

These matters came on for hearing September 13, 2017 in Sandpoint, Idaho before Hearing Officer Travis VanLith. Appellants Jacob Behrens and Rob Behrens were self-represented. Assessor Jerry Clemons represented Respondent.

Board Members David Kinghorn and Leland Heinrich join in issuing this decision.

**The issue on appeal concerns the market values of two (2) vacant residential parcels.**

**The decisions of the Bonner County Board of Equalization are modified.**

FINDINGS OF FACT

For purposes of this decision, and due to the similarity of the issues presented, the above-captioned appeals are decided in a consolidated fashion.

Appeal No. 17-A-1038 (Parcel No. RPP0000012286A)

This .58 acre vacant residential parcel with 174 waterfront feet on Lake Pend Oreille

is assessed for \$318,000. Appellants contend the correct value is \$145,000.

Appeal No. 17-A-1039 (Parcel No. RPP0000012252A)

The assessed value of this .63 acre vacant residential parcel with 300 waterfront feet on Lake Pend Oreille is \$375,000. Appellants contend the correct value is \$145,000.

Subjects are adjoining parcels situated roughly four (4) miles north of Sandpoint, Idaho, in an area referred to as Ponder Point. The location of the lots was described as a desirable area adjacent to lakefront homes. Subjects were noted to enjoy “superior” views of the lake and surrounding mountains.

Appellants detailed some of the history associated with the subjects. Specifically, the lots suffered landslides in 1995, 1997 and 1998, which resulted in large portions of the lots sloughing off into the lake. According to Appellants, the landslides are well known within the local real estate community and have caused an irreparable negative stigma.

The landslides additionally caused serious stability issues, which Appellants noted limit the potential development options. Appellants offered into evidence a Geotechnical Engineering Evaluation report, prepared in 1994, detailing the condition of the lots. The report identified high ground water levels and generally soft soil conditions. According to the report, construction of a residential structure would require a deep foundation system. Specifically, pilings would need to be driven to the underlying bedrock which ranged in depth from 47 to 63 feet, and such pilings would need to have a minimum center-to-center spacing of eight (8) feet. The report also identified other construction requirements aimed mostly at spreading the weight of the proposed residential structure evenly across the

pilings in an effort to reduce the risk of uneven settling. The report further indicated work would need to be done to manage storm water drainage and minimize erosion.

In addition to the development restrictions resulting from the landslides, Appellants noted portions of the lots are designated wetlands and therefore cannot be developed. Appellants provided letters and other correspondence from the U.S. Army Corps of Engineers and the United States Environmental Protection Agency, detailing the wetland areas on the parcels and the associated development prohibitions. The U.S. Army Corps of Engineers did identify a building footprint on each subject lot, roughly 1,500 square feet in size. Appellants noted the building footprints allowed for only a residence on each lot, with no space available to construct outbuildings, nor any space to accommodate a yard. In Appellants' view, these building restrictions further diminished subjects' values.

Appellants further described issues related to accessing the lots. Currently, access is via a leased easement agreement with the railroad which owns the neighboring land. Appellants detailed plans for permanent access extending from an adjacent cul-de-sac, which plans would require notable cost. The existing slope from the cul-de-sac to subjects is 12%, however according to Appellants, county building codes require a maximum slope of 9%. To achieve the 9% slope target, ten (10) foot tall retaining walls extending roughly 200 feet in length would need to be installed along both sides of the proposed driveway. Appellants contended this factor additionally reduces subjects' current market values.

In terms of value evidence, Appellants offered an appraisal report prepared by a local fee appraiser with a January 1, 2016 effective date of valuation. The appraisal

referenced the landslide history and described a general negative stigma attached to the parcels. The appraisal further explained a search of sales stretching back five (5) years for properties with issues similar to the subjects' issues yielded no results. Due to the absence of comparable-type lot sales, the appraisal took a different approach. The appraisal estimated the value of the lots as a single unit and as if they were currently ready to be built upon. This yielded a value of \$950,000. Starting with this figure, the appraisal then backed out an estimated cost-to-cure value of \$660,000, which estimate was reportedly obtained from a local contractor, characterized in the appraisal report as an expert in the type of earth work required to remedy subjects' issues. The result was a combined value conclusion of \$290,000, or \$145,000 for each lot.

Respondent pointed out the subject parcels are currently listed for sale with asking prices of \$475,000 for the lot with fewer waterfront feet, and \$599,000 for the lot with more front feet on the lake, or an alternative asking price of \$995,000 for both lots. Respondent noted engineered site plans for the subject lots have been completed and building plans are available, and further highlighted the listing details did not mention all the rehabilitation work described by Appellants. Appellants explained subjects have been on the market for nearly ten (10) years at or near current asking price levels, but have not received any offers. Appellants testified while the listings did not reference the potential construction difficulties and associated costs, the listing agreement with the realtor specifically requires a potential buyer to "sign-off" on the Geotechnical Engineering Evaluation report, thereby acknowledging the construction challenges.

In support of subjects' respective assessed values, Respondent offered information on three (3) sales of improved waterfront residential properties located within a few miles of subjects. The adjustments made to the sale prices were somewhat different for the respective parcels. Respondent reported land grade ratings of "good" were assigned to each sale lot, which was noted to be superior to the land grade of "average" assigned to each subject lot. The sale prices ranged from \$499,000 to \$940,000. After removing the assessed values of the associated improvements, Respondent calculated residual land values from each sale of \$465,908 and \$613,520.

From the residual land values, Respondent made an upward adjustment to account for both subjects enjoying more waterfront feet, and a negative adjustment due to the inferior land grade of the subjects, though at different rates for each subject lot. For the subject lot with lesser front feet, a land grade adjustment of minus \$301,425 was applied to each sale price. The result was adjusted prices ranging from \$377,138 to \$542,138, or from \$2,168 to \$3,116 per front foot. For the other subject lot, the downward land grade adjustment was \$353,336, which yielded adjusted prices between \$449,898 and \$612,142, or between \$1,500 to \$2,050 per front foot.

Appellants contended the sales used by Respondent were inappropriate because the properties did not suffer from conditions similar to those faced by subjects. Appellants noted the sale properties were improved with large residences and detached garages or other types of outbuildings. Also highlighted was the sale properties enjoyed large level landscaped yards with easy access to the shoreline, whereas subjects could not be

similarly improved due to the wetlands restrictions.

Respondent further explained subjects were each given an additional 15% downward adjustment from the values indicated by the sales. This adjustment was reported to account for location and the irregular shapes of the lots.

#### CONCLUSIONS OF LAW

This Board's goal in its hearings is the acquisition of sufficient, accurate evidence to support a determination of fair market value, or as applicable exempt status. This Board, giving full opportunity for all arguments and having considered all testimony and documentary evidence submitted by the parties in support of their respective positions, hereby enters the following.

Idaho Code § 63-205 requires taxable property be assessed at market value annually on January 1; January 1, 2017 in this case. Market value is defined in Idaho Code § 63-201, as,

“Market value” means the amount of United States dollars or equivalent for which, in all probability, a property would exchange hands between a willing seller, under no compulsion to sell, and an informed, capable buyer, with a reasonable time allowed to consummate the sale, substantiated by a reasonable down or full cash payment.

Market value is estimated according to recognized appraisal methods and techniques. The three (3) approaches to value include the sales comparison approach, the cost approach, and the income approach. *Merris v. Ada County*, 100 Idaho 59, 63, 593 P.2d 394, 398 (1979). The market value of residential property is commonly derived from the sales comparison approach which generally considers recent sales of similar type

property.

The Board recognizes the difficult challenge in estimating the market values of the subject lots, which lots are decidedly unique pieces of property. In this regard, the Board appreciated the parties' efforts in developing and providing information for use in these difficult appraisals.

Appellants provided a plethora of information and photographs detailing the physical condition of the subjects and the scope of work needed to transform the lots into ones capable of supporting residential structures. Though specific estimates were not offered, it is clear significant costs would be associated with the effort to develop the lots for residences. In addition to the stabilization and foundation work to install a suitable driveway and construct residences, the lots are further impacted by the designated wetland areas. Indeed, each subject lot has only a modest building footprint, and due to the wetlands are unable to support additional outbuildings. These restrictions were not lost on the Board.

The parties provided value estimates, however, the Board had concerns with both parties' offerings in this regard. Appellants' submitted an appraisal report prepared by a local fee appraiser. The appraisal reported a complete lack of sales involving properties with similar circumstances as those faced by subjects. As such, the appraisal took a different approach in valuing subjects. The appraisal started with an estimate of the combined value of \$950,000 for both subjects under the assumption the preparatory work had already been completed and the lots were ready to be developed. This starting figure

appeared rather suddenly in the report and was not supported by sales or other market information, which was concerning to the Board. From there, the appraisal simply deducted \$660,000 as the estimated cost to cure subjects' various challenges. Again, this figure was not supported other than a simple statement indicating the estimate was obtained from a local contractor competent in the type of work needed. In all, the Board was unable to place much weight on this appraisal report.

In similar fashion, the Board had reservations about relying too heavily on the value information offered by Respondent. All three (3) sales provided involved improved properties, which is inherently problematic when trying to estimate the value of raw land like subjects. Also, none of the extensively improved sale properties were associated with development restrictions that were similar to those present with the subjects. These concerns, along with a general lack of consideration for subjects' unique characteristics, caused the Board to cautiously weigh Respondent's value conclusions.

In appeals to this Board, Appellants bear the burden of proving error in the subjects' valuations by a preponderance of the evidence. Idaho Code § 63-511. While we found the burden of proof satisfied, we did not find sufficient evidence to support the respective values requested by each Appellant. It is clear subjects are facing significant physical challenges to their development and use as residential building sites, and nothing in the record suggested these issues have been significantly remedied. The Board did not find the current listing price information to be in itself a reliable indication of market values. The lots have been on the market for nearly ten (10) years without a single offer, which is

strong evidence the asking prices do not reflect current market value. Ultimately, in the Board's view subjects' assessed values should be adjusted downward to give more consideration to subjects' unique features.

Based on record before us, and in our experience and judgment, we find a fair market value of \$286,200 for Parcel No. RPP00000112286A and a fair market value of \$337,500 for Parcel No. RPP00000112252A. The decisions of the Bonner County Board of Equalization are modified accordingly.

#### FINAL ORDER

In accordance with the foregoing decision, IT IS ORDERED that the value decisions of the Bonner County Board of Equalization concerning the subject parcels be, and the same hereby is, MODIFIED, as follows:

| Parcel No.      | Market Value |
|-----------------|--------------|
| RPP00000112286A | \$286,200    |
| RPP00000112252A | \$337,500    |

IT IS FURTHER ORDERED, pursuant to Idaho Code § 63-1305, any taxes which have been paid in excess of those determined to have been due be refunded or applied against other *ad valorem* taxes due from Appellants.

Idaho Code § 63-3813 provides under certain circumstances the above-ordered values for the current tax year shall not be increased in the subsequent assessment year.

Jacob Behrens, Rob Behrens  
Appeal Nos. 17-A-1038 & 17-A-1039

DATED this 9<sup>th</sup> day of November, 2017.