

BEFORE THE IDAHO BOARD OF TAX APPEALS

PLBM, LLC,)	
)	
Appellant,)	APPEAL NOS. 18-A-1013,
)	18-A-1014, & 18-A-1015
v.)	
)	FINAL DECISION
BONNER COUNTY,)	AND ORDER
)	
Respondent.)	
_____)	

RESIDENTIAL PROPERTY APPEALS

These appeals are taken from decisions of the Bonner County Board of Equalization modifying protests of valuation for taxing purposes on properties described by Parcel Nos. RP59N04W096050A, RP59N04W096910A, and RP59N04W098715A. The appeals concern the 2018 tax year.

These matters came on for hearing September 12, 2018 in Sandpoint, Idaho before Hearing Officer Travis VanLith. Attorney John Magnuson represented Appellant at hearing. Chief Deputy Assessor Al Ribeiro represented Respondent.

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

The issue on appeal concerns the market values of three (3) adjoining wetland parcels.

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

FINDINGS OF FACT

Parcel No. RP59N04W096050A (Appeal No. 18-A-1013)

The assessed land value of this 21.4 acre parcel with 249 feet of waterfront is \$505,051.

Parcel No. RP59N04W096910A (Appeal No. 18-A-1014)

The assessed land value of this 21.43 acre parcel with 1,077 feet of waterfront is \$1,442,635.

Parcel No. RP59N04W098715A (Appeal No. 18-A-1015)

The assessed land value of this 21.582 acre parcel with 1,266 feet of waterfront is \$1,557,072.

The above three (3) parcels are undeveloped, adjoining waterfront parcels situated along the southern shore of Priest Lake near Coolin, Idaho. The parcels are located in a high risk flood hazard area and nearly all the parcels' combined 64.41 acres are designated wetlands. The acreage is officially designated either "Freshwater Forested/Shrub Wetland" or "Freshwater Emergent Wetland". The parcels are mostly covered with native brush, trees, and shrubs suited for wetland soils. Only a small portion in the southwest corner of one (1) of the parcels is not designated wetlands.

Being wetlands, the properties are naturally prone to seasonal flooding. Photographs from the spring of 2018 depicted standing water and flood-like conditions over the only access road, as well as over other portions of the parcels. Because the parcels are designated wetlands, any potential development, assuming such development would be allowed, would require navigating a complicated federal permitting process. It was also noted local water officials intend in the near future to increase the lake's summer water level by as much as six (6) inches. It was suggested this would likely cause further water-related issues for the parcels. Prior to Appellant's purchase on December 6, 2016, the subject parcels were part of a larger tract owned by an estate. In late 2006, after being listed on the open market with an asking price of \$2,000,000, an offer was made by a third party developer to purchase the properties¹ for \$2,400,000, and a

¹It was suggested there may have been confusion between the developer and the seller how much acreage was to be involved in the purchase. Apparently, the developer believed the subject parcels and additional land was to be included in the \$2,400,000 purchase price, whereas the seller thought only the

purchase agreement reflecting such was executed. During this same time, one of Appellant's principals, who had a verbal right of first refusal, became aware of the third party offer. The verbal right of first refusal was granted by the seller in connection with a prior property transaction between the two men more than twenty (20) years ago. No specific price or other consideration was tied to the right of first refusal, just the option to outbid any purchase offer. Appellant approached the administrator of the estate regarding this right of first refusal and it was honored. Appellant then submitted an offer of \$2,500,000 for the properties, which was accepted.

In support of reducing subjects' assessed values, Appellant offered an independent fee appraisal report with an effective date of valuation of January 1, 2018. Viewing the wetlands designation as a primary influence on the market value of the subject properties, the appraisal sought to identify the value contribution, or diminution in value, attributable to the wetlands. The appraisal allocated value to the water frontage and remaining acreage based on a depth of 250 feet for the frontage. It was also noted there were no recent waterfront sales on Priest Lake involving parcels similar to subjects in terms of acreage and frontage length. Therefore the appraiser expanded the geographic scope of the search for comparable sales, particularly for larger tracts with flooding or wetland influences. Due to expanding the search, some of the sales included in the appraisal involved non-lakefront parcels.

In all, the appraisal provided information concerning thirteen (13) sales, with subjects' December 2016 purchase for \$2,500,000 representing the first sale in the report. Sale No. 2 was a 22.1 acre parcel of low-lying land on the Pend Oreille River. Roughly two-thirds (2/3) of the

subject parcels were included.

parcel was flood hazard or submerged land. The property did have a building site situated outside the flood hazard area, and a septic permit. The property sold in October 2014 for \$602,000. Respondent questioned the arm's-length nature of subject's purchase due to Appellant having and exercising a right of first refusal. Regarding Sale No. 2, Respondent stressed the property was located on the river roughly twenty (20) miles from subjects and therefore not comparable.

The third sale was pending at the time the appraisal report was prepared. The sale totaled 107.59 acres, with roughly 38 acres of flooded and submerged lands and wetlands, and the remaining acres described as hillside timber land. The property had reportedly been listed for sale, on and off, since 2005. The initial asking price of \$2,900,000 steadily declining down to \$525,000. The property sold for \$400,000. Respondent noted this was a pending sale at the time of the appraisal report, and further the property was located in neighboring Kootenai County.

Sale No. 4 was approximately 120 acres of wetlands meadow located near Priest River. The property was described as an unimproved slightly rolling pasture with sparse timber, wet meadows, and three (3) ponds. This sale was used as an indication of value for subjects' wetland acreage. The property had historically been put to grazing use. This sale took place in December 2013 for \$435,000. Respondent highlighted this was non-waterfront and argued it should not be used as a comparable sale.

The next sale concerned a low-lying frontage along the Pend Oreille River. The property was 40 acres in size, with roughly 12.6 acres situated above flood elevation. The sale included nine (9) platted lots sold in a "bulk" sale. Though the road and rip-rap seawall improvements were complete at the time of sale, the appraisal noted more infrastructure improvements were

needed to finish the development. The property was listed for sale at \$2,150,000 and sold in May 2015 for \$2,000,000 after more than 400 days on the market. The appraisal concluded the final price represented a discount of approximately 20% from full retail pricing, due its bulk nature. Respondent pointed out this sale property was located on the river, not Priest Lake.

Sale No. 6 was the only sale of a parcel on Priest Lake. The 1.49 acre irregularly-shaped lot enjoyed nearly 600 front feet on the lake. The property was improved with a small A-frame cabin which contributed minimal value. This lot sold at a State-sponsored auction in October 2015 for \$504,000, plus \$15,000 for the cabin. Respondent countered the actual winning bid price for the lot was \$760,000. Further, Respondent argued this sale should not be used because it was sold at auction, and did not represent an arm's-length transaction.

The seventh sale involved twenty (20) acres which sold in May 2015 for \$54,000. Roughly twelve (12) acres were noted to be wetlands and the remaining acreage was described as uplands. The parcel lacked septic approval, however, the appraisal suggested it might be able to obtain a permit in the future. This sale was used to support the lower end of the price range for wetlands acreage. Respondent noted the property was non-waterfront and contended it should therefore not be compared to waterfront property.

Sale No. 8 was a 291 acre tract with 4,000 front feet along the Coeur d'Alene River. The appraisal estimated roughly 75% was wetlands and the remaining acreage was uplands. This sale was noted to be inferior to subject in terms of location and development potential. Respondent contested the comparability of this sale because it was located in neighboring Kootenai County.

The next sale, with a price of \$249,000, occurred in June 2017. This .44 acre parcel was

described as sloped and partly wooded, with a gravel beach. It was noted this sale property had no septic approval and had no building site. Rather, the lot was characterized as a recreational, or "dock", lot on Lake Pend Oreille. Respondent highlighted this property was located roughly thirty (30) miles away from subjects on a different lake.

Sale No. 10 was a twelve (12) acre partially submerged parcel located on the Pend Oreille River. It enjoyed 1,247 front feet on the river and was improved with a small cabin and a shed. The property was listed on the market for several years with an original asking price of \$1,405,000, which was reduced several times. The property sold in September 2013 for \$745,000. Again, Respondent focused on the fact this sale property was not located on Priest Lake, but rather on the Pend Oreille River.

Sale No. 11 was 21.08 acres with uplands on the east and west sides and wetlands through the middle. The appraisal indicated the parcel had one (1) potential building site. Overall, the appraisal regarded this sale property superior to subject. Respondent pointed out this sale was not waterfront and argued it should be disregarded on such basis.

The twelfth sale concerned 23.61 acres near Coolin, Idaho. With roughly one-third (1/3) of the site consumed by wetlands, the appraisal regarded this property as generally superior to subject. After 559 days on the market, the parcel sold in January 2018 for \$150,000. Again, Respondent's primary concern with this sale was its location near a different lake.

The last sale in Appellant's appraisal was a November 2017 sale of a 19.67 acres. The property was described as mostly wetlands with no chance of obtaining a septic permit; meaning the parcel was unbuildable. Respondent argued this sale should not be compared to subject because it is non-waterfront and located in Kootenai County.

The fee appraisal acknowledged subjects are unique and there was not enough market information to extract quantitative adjustments. None of the sale properties were exact matches for subjects, however, each of the sales shared some key attributes with subjects, such as wetland areas. The sales were used to bracket the probable range of value for subjects. The appraisal applied time adjustments to older sale prices, and also made qualitative adjustments. With substantial weight afforded subjects' December 2016 purchase, the appraisal concluded a combined value of \$2,732,000 for subjects, allocated as follows:

Parcel No. RP59N04W096050A: \$ 350,000
Parcel No. RP59N04W096910A: \$1,097,000
Parcel No. RP59N04W098715A: \$1,285,000

Respondent discussed subjects' recent assessment history. It was explained a land value matrix was developed in 2016 for waterfront parcels situated on Priest Lake. A study of over thirty (30) lakefront sales from 2013 to 2015 was used to develop the matrix. The study revealed two (2) primary factors which tended have the largest influence on values around the lake; beach type and lot topography. Each lakefront parcel was evaluated against these criteria, and site ratings were assigned accordingly. Subjects were assigned site ratings of "average", which was the mid-point rating.

For the 2017 tax year, subjects' assessed values were increased due to the information from a 2016 improved waterfront sale with an average site rating. The sale has 57.5 front feet on Priest Lake and sold for \$477,000. Respondent removed the assessed value of the associated improvements and calculated a land residual of \$336,560, or \$5,853 per front foot. As a result of this sale, assessed land values for all average-rated waterfront parcels, including subjects, were increased for 2017. As no waterfront sales of average sites occurred during

2017, subjects' values remained unchanged for the current 2018 assessment. Appellant pointed out none of the sales used to develop Respondent's land matrix were as large as subjects and none were encumbered with wetlands.

Respondent further explained prior to Appellant's purchase, subjects were assessed as agricultural land. At that time Respondent was unaware subjects were primarily wetlands. During a county-level protest, the county assessor learned of the wetlands issue and suggested the Board of Equalization (BOE) reduce subjects' valuations by 50%. It was explained the 50% adjustment was an assessor's office policy applied to nonbuildable parcels throughout the county. The BOE agreed to reduce subjects' values by 50% to their current 2018 levels. While the adjustments were appreciated, Appellant argued they were not the result of any recognized appraisal practice.

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, hereby enters the following.

Idaho Code § 63-205 requires taxable property be assessed at market value annually on January 1; January 1, 2018 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 sales comparison approach, the cost approach, and the income approach represent the three (3) primary methods for determining market value. *Merris v. Ada County*, 100 Idaho 59, 63, 593 P.2d 394, 398 (1979). The sales comparison approach is most applicable for property like the subject parcels.

Admittedly, subjects are truly unique pieces of lakefront property, and as such, present a difficult appraisal assignment. This reality was not lost on the Board and the parties' respective efforts to develop well-supported value conclusions were much appreciated. Appellant's primary value evidence included subjects' December 2016 purchase and an independent appraisal report. Respondent, by contrast, did not attempt a direct sales comparison approach. Instead a Priest Lake land value matrix for 2016 was relied on.

While Respondent's valuation methodology is understood by the Board, there was concern with whether it worked well determining subjects' market values. The matrix may work well for more typical lakefront parcels, however, none of the sales involved had wetlands issues; certainly not to the extent subject's had. Also, the matrix did not include larger acreage sales. The matrix does account for larger frontages by using a declining value scale, however, subjects have a combined frontage in excess of 2,500 front feet. It was not clear how well the matrix accounted for frontage so far in excess of a typical Priest Lake lot. Also, while the initial matrix considered over thirty (30) sales, subjects' current values resulted from an adjustment based on a single 2016 sale of an improved residential parcel with 57.5 front feet. In general Respondent's model may yield reliable values. However, as applied to subjects sizes the Board is not convinced it served well. Similarly, the Board was not satisfied the standard 50% adjustment fit well with parcels as unique as subjects.

The analysis in Appellant's fee appraisal report was better received by the Board, however, there were some concerns. The most obvious concern was the comparability of the sale properties used in the analysis; particularly in terms of location. Priest Lake is a unique area with its own market, so sales from the immediate area would naturally be preferable. The fee appraisal seemed to acknowledge some of the sale properties were situated in inferior locations. However it was not apparent how the appraisal considered this key factor. Also, the appraisal heavily considered non-waterfront properties. That being said, the appraisal did attempt to ascertain what impact wetlands acreage had on subjects' market values. As there were no recent sales of large acreage wetland properties on Priest Lake, the appraisal naturally expanded the geographic scope of the search. This is common and accepted appraisal practice in the Board's experience.

It appears the main difference between the parties' cases is which of subjects' characteristics should receive primary consideration. As subjects are lakefront parcels, Respondent focused mostly on the lake frontage. Appellant, on the other hand, highlighted the amount of wetlands acreage encumbering subjects. Indeed, these two (2) aspects are dominant characteristics of the parcels and consideration of both should feature prominently in determining market value. The problem is neither party offered comparable sales which did not require large subjective adjustments. Several of Appellant's sale properties had some water frontage and wetlands acreage, but none of these were located in subjects' neighborhood. Other sale properties had no water frontage at all. Respondent only shared details on the one (1) sale used to adjust values for 2017. However, from the testimony offered it was clear the sale properties used to develop the land matrix were smaller buildable lakefront parcels. None of the sale lots

used in the study were dominated by wetlands similar to subjects. This lack of directly comparable sales on Priest Lake further illustrates the singular uniqueness of the subject parcels.

With a lack of good comparable sales, it becomes clear the strongest indicator of market value in this particular instance is subjects' actual purchase in December 2016 for \$2,500,000. Respondent raised concerns about a prior relationship with the previous owner who orally granted Appellant a right of first refusal. Respondent's concerns are certainly valid, however, the price of \$2,400,000 had already been agreed to by the seller and an independent buyer, after the properties had been listed for some time at \$2,000,000. Admittedly, there was some question as to what acreage was included in the \$2,400,000 price. However from Appellant's testimony, the buyer believed the transaction included more acreage than just the subject parcels. Appellants' purchase included only the subject parcels. The price paid was \$100,000 more than the previous offer which was initially accepted by the seller. In other words, to the extent Appellant had a relationship with the previous owner, nothing in the record indicates this resulted in a reduced or discounted price. Quite the opposite, Appellant paid more than the third party potential purchaser agreed to pay. The right of first refusal would simply afford Appellant the opportunity to outbid the potential purchaser.

Idaho Code § 63-511 places the burden on Appellant to demonstrate error in subjects' valuations by a preponderance of the evidence. Given the record in this case, we find the burden of proof satisfied. However we did not find sufficient support to reduce subjects' values to those requested by Appellant.

While the Board gave primary weight to subjects' purchase information and the fee

appraisal, Respondent's value information was also factored in. Respondent's data focused primarily on subjects' frontage on Priest Lake. This in the Board's view should feature prominently in valuing this lakefront property. Less emphasis was given subjects' lake frontage in the fee appraisal. We also note subject's purchase was roughly one (1) year prior to the controlling valuation date in these appeals. So an adjustment for date of sale is warranted. Taking everything into account, we find good support for a valuation between the parties' respective value estimates.

Based on the above, the decision of the Bonner County Board of Equalization is modified. A total valuation for subjects of \$2,900,000 is detailed (allocated) in the final order below.

FINAL ORDER

In accordance with the foregoing Final Decision, IT IS ORDERED that the decisions of the Bonner County Board of Equalization concerning the subject parcels be, and the same hereby are, MODIFIED to reflect decreases as follows:

Parcel No. RP59N04W096050A (Appeal No. 18-A-1013): \$ 417,902
Parcel No. RP59N04W096910A (Appeal No. 18-A-1014): \$1,193,704
Parcel No. RP59N04W098715A (Appeal No. 18-A-1015): \$1,288,394

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 Appellant.

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

DATED this 14th day of November, 2018.