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MONTANA ELEVENTH JUDICIAL DISTRICT COURT, FLATHEAD COUNTY

WILLIAM M. SOLEM & ELLEN G. SOLEM)	
And JOHN DOES I-V,)	Cause No.: DV-2010-073
)	Dept. No. D
Plaintiffs,)	
)	Honorable Dan Wilson
vs.)	
)	
MONTANA DEPARTMENT OF REVENUE,)	MONTANA DEPARTMENT
a department of the State of Montana,)	OF REVENUE'S BRIEF IN SUPPORT OF
)	MOTION FOR DECERTIFICATION OF
Defendant.)	CLASS, OR IN THE ALTERNATIVE TO
)	REMOVE CLASS REPRESENTATIVES,
)	AND PROVIDE ADDITIONAL NOTICE
)	

The Montana Department of Revenue ("Department"), by and through its attorneys of record, moves this Court to decertify the Class since neither the Class Representatives nor the Class has not suffered any damages as this Court's ruling on the methodology resulted in an increase in taxable value, not a decrease, and the Class is no longer being viable since it lacks the necessary elements of Rule 23, M.R. Civ. P. In the alternative, the Court should remove and replace the Class Representatives, and provide supplemental

notice to the Class of the intention and results of increasing the valuation of property in Neighborhood 800.

INTRODUCTION

As the Court is aware, this matter began and developed as an action to protest the overvaluing of property owned by the Solems. Bolstered by a community perception that the Department had systematically overvalued property in the 2008 appraisal cycle, the Solems sought first an informal review of their valuation, and then ultimately a determination from this Court to confirm that perception. During the course of trial, however, the Solems realized they could not carry their burden to demonstrate that the Department overvalued property, and, as result, argued instead that the Department under valued property. This strategic goal was never communicated to the Class, who was only provided notice that the Class Representatives sought to lower valuations. As a result of these decision, the Class is now bound to a higher valuation for the 2008 cycle that was assessed, and as a result has suffered no damages. Without damages, neither the Class Representatives nor the Class have any standing to pursue damages as they have suffered no injury, and the Class Representatives have become antagonistic to the Class by seeking to increase taxable values rather than decrease taxable values. As a legal, practical and economic conclusion, no one would have opted into this Class had they known their advocates were pressing for higher values.

A. THE CLASS REPRESENTATIVES FAILED TO PROPERLY INFORM AND REPRESENT THE CLASS.

This matter began as a protest against the Department's overvaluation of real property owned by Mr. and Mrs. Solem. The Solems were unequivocally clear that the issue with the Department's methodology was that it overvalued waterfront property. See, Complaint, 1st Amend. Compl., 2nd Amend. Compl.; 3rd Amended Compl.; and 4th Amended

Compl. The Department knows that the Solems assertion was commonly made and genuinely believed by the Class Members by virtue of the valuation. Hundreds of other members of Solems' neighborhood made substantially the same complaint. Ex. V. As argued and by the Class Representatives at trial, Exhibit V demonstrates that tax payers were concerned that the values determined by the Department's methodology were too high, not too low.

The general issue for the Class is not that their valuations are too low. Indeed, not a single bit of evidence from non-retained witnesses, documents from the Department, or from the tax payers (in the form of AB 26s, CTAB or STAB appeals, or responses to the Class Opt-In Notice, filed separately under seal as Ex. RRR (SOLEM 700 to 861), indicate that no one ever complained their valuations are too low.

Correspondingly, the thrust of this litigation was consistent, with one notable exception, all the way through opening arguments at trial - the valuation was too high, corresponding taxes too high, and the higher taxes a burden on the Solems and the Class. See, Transcript: p. 33:1-16. And in the Class notice, the Class Representatives acknowledged that "if the court determines that the Department of Revenue used inappropriate methodology resulting in higher taxes than should have been assessed, then the court will determine damages for class members." See, Notice of Class Action, p. 2. Class Members were notified that the damages would only be awarded if the court determined they had overpaid taxes.

However, the notice failed to include any indication to Class Members that 1) the Class may have seen increases in the values of the their property as a result of the litigation, 2) the Class Representatives would argue their values should be increased, or 3) increases in valuations does not result in an award of damages, but could result in an increase of taxes.

Meanwhile, without informing the Class of these facts, which undoubtedly would have influenced their decision whether to participate or not, the exception to the uniform theme that higher valuation, and higher taxes, was revealed by Mr. Solem. You see he readily agreed that he was prepared to accept an increase in valuation and pay increased taxes if that is what the result of this suit accomplished, and agreed this was the proper measure of damages.

Q. What if your taxes go up as a result of the liability phase? Do you have any --

A. I'll be glad to pay the taxes, then, if that happens. I have never objected to paying taxes as long as they're fair and reasonable.

See, Ex. QQQ, Deposition of Mr. Solem, p. 42 (filed herewith). Again, this risk was not conveyed or transmitted to the Class, nor was the strategy to achieve this result communicated either. The Class notice also lacks any language to convey this goal and attendant risks to the Class, as required by Rule 23(c)(2)(A), M.R. Civ. P. Order, 4/16/16, p. 6.

B. CLASS DECERTIFICATION IS APPROPRIATE, OR, A THE CLASS REPRESENTATIVES SHOULD BE REPLACED AND THE PROPER NOTICE PROVIED TO THE COURT.

To the undersigned's knowledge, the Montana Supreme Court has not ruled on a motion to decertify a Class, nor is there a reported decision involving a contested motion in a district court case. As such the Montana Supreme Court has directed that guidance from the Federal Courts is a reliable and a source of precedential value. See, *McDonald v. Washington*, 261 Mont. 392, 399 (cases interpreting Federal rule 23 are instructive). The Ninth Circuit has defined the standards by which a court considers a decertification order.

Even after a certification order is entered, "the [Court] remains free to modify it in the light of subsequent developments in the litigation." *Gen. Tel. Co. of Sw. v. Falcon*, 457 U.S. 147, 160 (1982); see also, Fed. R. Civ. P. 23(c)(1)(C). ("An order that grants or denies class

certification may be altered or amended before final judgment.”). “The standard used by the courts in reviewing a motion to decertify is the same as the standard when it considered Plaintiffs’ certification motions.” *Ries v. Ariz. Beverages USA LLC*, No. 10-01139, 2013 WL 1287416, at *3 (N.D. Cal. Mar. 28, 2013) “On a motion for decertification, the burden remains on the plaintiffs to demonstrate ‘that the requirements of Rules 23(a) and (b) are met.’” *Id.* (quoting *Marlo v. United Parcel Serv., Inc.*, 639 F.3d 942, 947 (9th Cir. 2011)); see also *Negrete v. Allianz Life Ins. Co. of N. Am.*, 287 F.R.D. 590, 598 n.1 (C.D. Cal. 2012) (“To the extent that pre-*Marlo* cases conclude that a defendant bears the burden on a motion to decertify of demonstrating that ‘the elements [of] Rule 23 have not been established,’ *Gonzales v. Arrow Fin. Servs. LLC*, 489 F. Supp. 2d 1140, 1153 S.D. Cal. 2007), these cases are no longer good law.”) Federal Rules of Civil Procedure 23, which governs class certification, has two sets of distinct requirements that a plaintiff must establish before the Court may certify a class. Plaintiff must satisfy all the requirements of Rule 23(a) and at least one of the prongs of Rule 23(b). Under Rule 23(a), the Court may certify a class only where “(1) the class is so numerous that joinder of all members is impracticable; (2) there are questions of law or fact common to the class; (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class; and (4) the representative parties will fairly and adequately protect the interests of the class.” Fed. R. Civ. P. 23(a). Courts refer to these four requirements, which all must be satisfied to maintain a class action, as “numerosity, commonality, typicality and adequacy of representation.” *Mazza v. Am. Honda Motor Co.*, 666 F.3d 581, 588 (9th Cir. 2012). Further, courts have implied an additional requirement: the class to be certified must be “ascertainable.” *Bruton v. Gerber Prods. Co.*, No. 12-CV-02412-LHK, 2014 WL 2860995, at *3 (N.D. Cal. June 23, 2014) (citing *Marcus v. BMW of N. Am., LLC*, 687 F.3d 583, 592–93 (3d Cir. 2012)).

In addition to meeting the requirements of Rule 23(a), the Court must also find that Plaintiff has satisfied “through evidentiary proof” one of the three subsections of Rule 23(b). *Comcast Corp. v. Behrend*, 133 S. Ct. 1426, 1432 (2013).

This Court reasoned that commonality and typicality were met because there was a central issue in the case – did the methodology overvalue the property? Order, 04/16/16, pp. 5-7. The determination of this Court is that the methodology, in fact, undervalued the case. FoF and CoL, 10/15/19, pp. 30 and 41 and COL, pp. 66 and 71; See also, Ex. PPP, the Department’s Expert Witness Disclosure (filed herewith). Save for the Solems, there is not a taxpayer in the state, much less the Class, that would endorse any action to increase their property valuations. There is not a case of record in the STAB, CTAB, or any court wherein a taxpayer sought to increase the valuation of property. Yet, during the trial of this matter, that is exactly where the Class Representatives directed this matter to go.

This is where the breakdown occurs between the Class Representatives and the Class, and why decertification should be made since Rule 23(a)(4) requires there be no antagonism between the Class absent Class Members and its Representatives. While this Court determined in 2016 that the interests of the Class and the Class Representatives were not antagonistic, the change of strategy at trial, made in order to have a basis to prevail, has altered that analysis. When this Court determined the Class Representatives and the Class were aligned in their interests, both the Class Representatives and the class had the same interest in proving that the methodology *overvalued* waterfront property.

However, it is evident that consistency ended by the time of trial. Importantly, by the time of trial, the Class Representatives had expended considerable personal resources in this action, greatly in excess of the amount to be gained by an order their property was overvalued. As a result, they argued, inconsistently with the interests of the Class, that the methodology was wrong because it undervalued the property.

The testimony of their specially retained experts honed in at trial on the manner in which the Department excluded sales it deemed unreliable, arguing it had artificially decreased values of all the lake front property holders by excluding certain outlier sales that would have increased values. Calculations demonstrating how valuations increase in response to this Court's Order are presented in the Department's Witness Disclosure.

The Class would have been better served to remain consistent with the various iterations of the complaints, notice and initial arguments about valuation being too high, rather than too low. Not so for the Class Representatives, who stand to gain (if successful in the recovery of attorney's feesⁱ) to win under any theory of valuation. By abandoning their promise to the Class to abide by the theory that their property was overvalued in order to seek a potential recovery of their attorney's fees, they have become antagonistic to the Class. Their interests are no longer aligned, and the Class should be decertified.

C. CLASS NOTICE REQUIREMENTS.

(2) Notice.

(A) For (b)(1) or (b)(2) Classes. For any class certified under Rule 23(b)(1) or (b)(2), the court may direct appropriate notice to the class.

(B) For (b)(3) Classes. For any class certified under Rule 23(b)(3), the court must direct to class members the best notice that is practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort. The notice must clearly and concisely state in plain, easily understood language:

- (i) the nature of the action;
- (ii) the definition of the class certified;
- (iii) the class claims, issues, or defenses;
- (iv) that a class member may enter an appearance through an attorney if the member so desires;
- (v) that the court will exclude from the class any member who requests exclusion;
- (vi) the time and manner for requesting exclusion; and
- (vii) the binding effect of a class judgment on members under Rule 23(c)(3).

M.R. Civ. P., Rule 23(c).

Notice to the Class must contain all the information identified in Rule 23 (c)(2), M. R. Civ. P. (2019). Though this Class is certified under Rule (b)(2), the requirements as stated for a Rule (b)(3) Class are well heeded, in particular that members of the Class are going to be bound by any judgment which results. In this case, the Class Representatives proposed that Class Members intentionally opt-in to the Class without informing them that they would be bound to any judgment in the case, whether it increased or decreased their valuation, or whether it resulted in higher or lower taxes. On the basis of these representations, more than 160 members of Neighborhood 800 responded they would opt in to the Class, including many who had previously appealed their valuations and received an adjustment on their taxable values. Of the approximately 160 responses, none indicated a desire or willingness, unlike Mr. Solem, to accept an increase.

Nor would the Class have any notion that such an order would be sought. Indeed, this Court's Order on Class Certification specifically determined that "the class is seeking a declaration regarding DOR's assessment methodology and a refund of any amounts over paid by class members" and that "[t]he question of whether this assessment methodology overvalues lakefront property in Neighborhood 800 will thus apply to the entire class." This document, along with notice, was made available to the Class which would reasonably believe this action to be aimed at reducing the valuation of the property due to the Department's methodology, not increasing it. The Class does not stand to benefit by an order which requires the Department to include sales which increase valuations, regardless of their validity. The Class Representatives were unable to demonstrate the methodology was flawed because it over valued property, and the Class should not suffer by this failure of proof. In the event the Court determines that the Class still meets the requirements of Rule 23(a) and (b), it should remedy the conflict the Class Representatives have with the Class on the valuation of property by removing them from further action on behalf of the

Class, and give the Class notice of such removal and the strategy decisions and results therefrom.

CONCLUSION

The Department respectfully requests this Honorable Court decertify the class, or in the alternative, replace the Class Representatives and provide supplemental notice of the increased valuation of their property as a result of the trial strategy embraced but not disclosed to Class Members.

Dated this 17th day of July 2020.

WALL, McLEAN & GALLAGHER, PLLC

By **/s/ Stefan T. Wall**
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**CO-COUNSEL FOR MONTANA DEPARTMENT
OF REVENUE**

The Department does not concede that the award of attorney's fees is appropriate in this matter and anticipates that issue will be briefed elsewhere in the litigation.

CERTIFICATE OF SERVICE

I, Stefan T. Wall, hereby certify that I have served true and accurate copies of the foregoing Answer/Brief - Brief In Support of Motion to the following on 07-17-2020:

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Electronically signed by LaNez Bailey on behalf of Stefan T. Wall
Dated: 07-17-2020

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MONTANA ELEVENTH JUDICIAL DISTRICT COURT, FLATHEAD COUNTY

WILLIAM M. SOLEM & ELLEN G. SOLEM)
And JOHN DOES I-V,)

Plaintiffs,)

vs.)

MONTANA DEPARTMENT OF REVENUE,)
a department of the State of Montana,)

Defendant.)

Cause No.: DV-2010-073
Dept. No. D

Honorable Dan Wilson

MONTANA DEPARTMENT
OF REVENUE'S
EXPERT WITNESS DISCLOSURE

The Montana Department of Revenue (Department), by and through their attorneys of record, pursuant to Rule 26(b)(4), M.R. Civ. P. and the Court's Fourth Amended and Abbreviated Scheduling Order dated December 18, 2019, hereby submits the following expert witness disclosure of persons who may be called to give expert testimony at the trial of this matter:

///

RETAINED EXPERT WITNESSES

1. Richard J. Hagar, SRA
President/Consultant
American Home Appraisals
7433 SE 27th St
Mercer Island, Washington 98040

Mr. Hagar will testify as an expert in support of his review of the reports of the witnesses of the Plaintiffs. Mr. Hagar will address the Department's appraisal and the opinions of the additional witnesses listed by Plaintiffs as expert witnesses. A summary of Mr. Hagar's opinions and the grounds for those opinions is contained in the attached report at DOR-SOLEM 010000-010007. Mr. Hagar's resume was previously identified and admitted as exhibit M (DOR-SOLEM 2712-2723). Mr. Hagar's hourly rate is \$200.00.

Discovery in this matter is ongoing, and Mr. Hagar reserves the right to supplement his opinions based on additional information obtained through discovery. His opinions and disclosure will be considered amended to include by reference the deposition testimony he is expected to offer if he is deposed.

HYBRID WITNESS

1. Scott Williams
Regional Manager
Property Assessment Division

The Department designates Mr. Williams as a "hybrid" witness as that term is used in *Faulconbridge v. State*, 2006 MT 198, ¶¶ 40-44, 333 Mont. 186, 142 P.3d 777.

Specifically, a "hybrid" witness is a witness "both possessing personal knowledge of the facts underlying the case, and capable of giving expert testimony." *Id.* ¶ 40. There is a distinction between a "hybrid" witness who has been retained by a party in advance of or for purposes of litigation and one who has not been so retained. *Id.* ¶ 43. A full Rule 26(b)(4), M.R. Civ. P. disclosure is required if a "hybrid" witness is retained by a party in advance of

or in anticipation of litigation, while the same is not required for a “hybrid” witness not retained in advance of or in anticipation of litigation. *Id.*

Mr. Williams will testify as a hybrid expert in support of the Department’s appraisal methodology and in support of his review of the reports of the expert witnesses disclosed by Plaintiffs. The subject matter of Mr. Williams testimony, the facts relied upon, the grounds for his opinions, and his opinions are more fully described in his report, attached at DOR-SOLEM 010008-010020. Mr. Williams resume was identified and admitted as Exhibit SS (DOR-SOLEM 2828-2831). Mr. Williams may be contacted through Department counsel.

Discovery in this matter is ongoing, and Mr. Williams reserves the right to supplement his opinions based on additional information obtained through discovery. His opinions and disclosure will be considered amended to include by reference the deposition testimony he is expected to offer if he is deposed.

ADDITIONAL FACT, EXPERT, OR HYBRID WITNESSES

1. Any other expert witness which may become necessary for impeachment or rebuttal purposes.
2. Any witness listed or called by Plaintiffs;
3. Any witness necessary for impeachment or rebuttal;
4. Any witness who may be necessary to lay foundation for any listed exhibit; and
5. Any person still to be identified in the course of discovery.

REBUTTAL EXPERTS

Pursuant to the Montana Rules of Civil Procedure, the Montana Rules of Evidence, Montana case law, and the Court’s Third Amended Scheduling Order, the Department reserves all other rights it has with respect to expert witnesses, including, but not limited to, its right to disclose rebuttal witnesses.

The Department reserves the right to withdraw the designation of any expert witness and to aver positively that any designated expert witness will not be called as a witness at trial and to re-designate the expert as a consulting expert who cannot be called as a witness by opposing counsel.

SUPPLEMENTATION

Pursuant to Rule 26(b)(4)(D), M.R. Civ. P., the Department will amend or supplement this disclosure when additional information becomes available.

Dated this 15th day of May 2020.

WALL, McLEAN & GALLAGHER, PLLC

By



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OF REVENUE**

CERTIFICATE OF SERVICE BY MAIL

I HEREBY CERTIFY that a copy of the foregoing **MONTANA DEPARTMENT OF REVENUE'S EXPERT WITNESS DISCLOSURE** has been served upon the following by mailing a true and correct copy thereof on this 15th day of May 2020, addressed as follows:

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Stefan T. Wall

May 15, 2020

Stefan T. Wall
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I've reviewed the data and methodologies employed by Montana's Department of Revenue (DOR) when determining the value for waterfront properties along the western side of the Flathead Lake and the impact of including all waterfront sales in the analysis. What follows is my examination based upon a review of the Excel files and sales data that were provided to me. This document is not an appraisal or a review of an appraisal it is simply an examination of the data and methods employed by the State. The conclusions are not applicable to other areas or time periods outside of the data I've examined.

Background

For the tax period 2004 - October 15, 2007 the DOR examined 46 waterfront sales in a neighborhood on Flathead Lake, identified as NBHD 800. Out of these 46 sales 17 were removed from the database due to various reasons (summarized below). The remaining 29 sales were used to populate a regression analysis and produce a valuation model that could be used to value, for tax assessment purposes, residential waterfront properties in that area.

The State of Montana and the DOR have received a court order requiring them to reexamine property values in the area using all 46 sales in their regression analysis. I have been asked to examine the new model that uses all 46 sales and determine if this process produces more credible value conclusions than the prior model. I have also been asked to consider the impact of including "all" information on an appraiser's obligation to the Uniform Standards of Professional Appraisal Practice (USPAP).

Brief Description of my Background

I have been a real estate broker since 1976, a certified real estate appraiser since 1986, and hold the SRA designation with the Appraisal Institute. I am a professor of real estate at Seattle Colleges and one of the few appraisers in the Nation to be qualified and certified to teach real estate appraisal in 46 states. As an instructor I educate appraisers regarding statistical modeling (regression analysis) and how it can help determining property values for individual properties as well as mass appraisals used in tax assessment. My classes on appraisal adjustments and statistical modeling have been approved by the Appraisal Qualifications Board (AQB) and forty-six (46) state appraisal boards. I am familiar with the methods used by the DOR in valuing properties in Montana.

Data Examined

Following is a list of the data that I have examined:

1. The DOR provided four Excel files:
 - a. NBHD 800.0.xls,
 - i. The files contain a list of 28 waterfront sales occurring in area 800 Somers/Lakeside during the 2004 and October 15, 2007 time period.
 - ii. A tab within the file titled "NBHD 800 Resale" has a list of seven properties that have sold twice between August 2000 and October 29, 2007.
 - b. NBHD 800.0 FF appeal with AV of sales.xls,
 - i. The file is the same as above however it contains some additional information about the same 28 properties.
 - c. NBHD 800.0 FF outlier sales.xls,
 - i. This file contains a list of 16 properties that the DOR considers outliers; properties with unusual property characteristics, and/or transactions terms, and/or involved the purchase of multiple parcels, and/or sold to related parties.
 - d. NBHD 800.0 FF Peretti appeal wi trend.xlsx
 - i. The same information as shown in item "a." but with fewer comments about each parcel.
 - e. NBHD 800.0 Post hearing all sales (*new*).
 - i. This file contains 46 sales.

Methodology Explanation and Analysis

The following is a simple analysis and brief explanation of the methodologies employed by Montana's Department of Revenue in valuing waterfront real estate.

Every identified parcel of real estate is unique. Even properties adjacent to each other that have the same general physical characteristics (sized and shape) are still unique due to their slightly different location on Earth. One parcel may have different sun exposure while the other a different underground water table each resulting in a similar but unique parcel. In the typical appraisal World, an appraisal for a property is custom created for each unique parcel at that moment in time. However when it's necessary to appraise thousands, if not tens of thousands of properties, custom appraisal methodologies are not practical.

MASS APPRAISAL: the process of valuing a universe of properties as of a given date using standard methodology, employing common data, and allowing for statistical testing. Mass appraising attempts to value a common, typical, or "standard" parcel then make adjustments for differences between the "standard" property and the rest of the properties in the market area.

Methods

Regression Analysis

One of the many recognized methods and techniques used in mass appraising is a regression analysis. The State of Montana uses the technique in appraising residential properties. A regression analysis is a mathematical modeling that attempts to quantify (place a dollar figure on) the actions of the market and determine the most likely value for a unique parcel of real estate. The analysis attempts to measure the actions of the majority of buyers and sellers.

Unfortunately due to its unique status the purchase of residential real estate is fraught with numerous variables, including ever changing economy, lending rates, the balance of supply/demand, and the emotions of buyers and sellers. Greater the demand for a parcel combined with limited supply, and in the case of waterfront, creates emotional variables tied to the purchase price.

In a multi-regression analysis, as more individual property characteristics are added to a model, it is anticipated that the overall value conclusion will become more accurate however, this assumes there is a large or increasing number of sales. When the number of sales is very limited, as in the case of Flathead Lake, attempting to determine how numerous **variables** impact value becomes impossible and often results in faulty value conclusions. An optimal regression analysis requires 30 or more sales for every variable that is being measured.¹ In a perfect world if a multiple regression analysis is attempting to determine property value by measuring four variables (such as total site size, front feet, slope, and location) then 120 or more sales would be desirable.

Conversely, the number of available sales limits the maximum number of variables that should be measured or quantified. As an example, if there are only 30 sales available for comparison then only one or two variables should be measured by the process. In the instance of Flathead Lake, due to the limited number of sales, it is appropriate that three or less variables are used to quantify the value of waterfront properties.

Summary. Due to the limited number of sales on Flathead Lake, the DOR's use of fewer variables in their regression analysis has produced a more accurate model of the actions of buyers and sellers. Increasing the number of variables will produce results that are less reliable.

Standardized Site

The utility of a site will vary based upon its frontage, depth, area, slope, utility of a site, and access to utilities. Similarly, the unit land values should be adjusted to account for differences in size between the comparables and the subject property. Since such an adjustment is generally necessary for each lot, it is beneficial that the appraiser adopt and/or develop standardized procedures for adjusting the lot size and the unit values to account for the variations. One method for determining these adjustments is the use of a regression analysis to analyze and determine certain "standardized" or common components of a site. The point of establishing a **Standardize Site** is to measure the actions of the market regarding waterfront sites that can be used for the construction of a house. Therefore, sites where a house could **not** be constructed or sites that only have a narrow access to the lake, rendering the lake side portion un-buildable, would not be considered "typical" residential sites and are not reliable indicators of value.

¹ In a regression analysis, there is no set number of "required" sales. A few sales, if they share major points of comparison, maybe superior to hundreds of sales where the properties have widely disbursed points of comparison.

Standardized Lot Width

In the case of Flathead County, the Zoning Regulations applicable to R-2 (Residential) requires a minimum lot width of 100'.² In addition the average lot width for the sales contained in the DOR data averages 127' of water feet. Therefore the Department of Revenue (DOR) using a standard lot size of 100' in their modeling would conform to the zoning requirements as well as the average water front footage in the area. Since zoning does not allow sites less than 100' in width, establishing a "Standardized Lot Width" less than this amount would force the DOR to use substandard lots in the analysis - this would not make sense.

Standardized Lot Depth

Flathead Zoning Regulations require a minimum lot area of 20,000 sf and a minimum lot width of 100' this would indicate that a standardize lot would be, at a minimum, 200' deep (from street to rear property line). Zoning does not allow for a lot to be smaller than 200' front to rear.

The DOR sales data that I have analyzed indicate a median lot depth, for the original twenty-nine (29) waterfront properties, is 300'. Their mathematical model is using standardized lot depth of 287' to 300' when calculating land value, therefore, the DOR's adjustment basis appears reasonable and in compliance with zoning requirements. Using anything less would mean that they are using sites that do not comply with zoning requirements which would introduce additional variables and problems.

Summary. The standardize lot width and depth figures used by the DOR, in their mass appraisal model, appear to fit the average or median sizes as well as conform to the minimum site requirements established by the county. Therefore, non-qualified residential lots should be **eliminated** from further modeling to procure more accurate results.

Results of Modeling

Standard of Error. A "standard of error" is a method for analyzing how closely sale prices fit the average or typical actions of buyers and sellers (as commonly indicated by a trendline). The larger the rate of error, the less likely the conclusions are accurately representing actions of the market.

In the original modeling the standard of error for 29 sales was \$288,957. When all 46 sales are included, as required by the court, the standard of error increases to \$453,336, a 63% difference. This wide error rate or dispersion of sales indicates that the inclusion of "all" sales is more likely to produce a faulty value conclusion.

Coefficient. In the original modeling all of the Coefficients for the three components measured (front feet, depth, & other) produced positive results; meaning that each component contributed to a property's value.

When all 46 sales are included, the Coefficient for depth of a site produced a negative number (-\$19,729). **If this figure is to be believed** it is indicating that as a site becomes larger (deeper) its value decreases by \$19,729 per foot; clearly in this instance the required modeling will not properly represent the actions of the market and could produce erroneous results.

Summary. Several of the major components used that reflect the accuracy of a model indicate that the inclusion of "all" sales will produce a value that is less reliable than the original model that used only 29 sales. In addition, the inclusion of the additional sales indicates that the tax assessed value of properties on Flathead lake should be increased.

² Flathead County Zoning; Section 3.10; R-2 One Family Limited Residential

Problems with Including “All” Sales

Several of the sales that were excluded from the original analysis did not meet the description of a “typical residential lot” and were excluded for good cause. **Some** of the reasons for excluding sales include:

- The site was used for the construction of condominiums (therefore not representative of a purchase for constructing a single family home);
- One site was not “waterfront” it only had access to the waterfront via community tract (therefore it was not representative of a “waterfront” property);
- An island, with excessive water frontage and incapable of being used for residential construction (an extreme outlier regarding front feet, access, and its residential use);
- One site, approximately an acre in size, had only 15' of waterfront (this outlier produced an erroneous extreme value on a per front foot basis).

Summary. The exclusion of several unconfirmed, unusual, and/or outlier sales is a common method designed to uses sales that are representative of the buyers and sellers for typical residential waterfront lots. When properly used, this method increases the accuracy of the value conclusions produced by modeling. Conversely, inclusion of oddball sales decreases the accuracy and credibility of the value conclusion. The court order requiring the inclusion of “all” sales has decreased the credibility of the value conclusion and may lead to higher possibly unreliable value conclusions.

Overall Accuracy of the Model’s Output

While some may question DOR’s individual adjustments for lot depth, front footage, or time, the best method of determining the overall accuracy of the model is by comparing sales prices against the same property’s tax assessed value.

The following table is a direct comparison of the sales prices for the original twenty-eight (28) waterfront properties located on Flathead Lake versus their 2008/2009 tax assessed values. Column G is the ratio between the sales price and the 2008/09 tax assessed value for each property.

Grid of the sales is on the following page.

	NBHD	Location	Geocode	Sale Date	Sale Price	2008-09 Tax Assessed Value	Assessed Value vs. Sales Price
1							
2	800	Somers	07383426208080000	4/28/2006	\$ 950,000	\$ 439,227	46%
3	800	Lakeside	07370506406110000	8/29/2007	\$ 750,000	\$ 1,044,200	139%
4	800	Hockaday	07370528105150000	8/24/2006	\$ 995,000	\$ 1,054,800	106%
5	800	Somers	07383426210010000	7/16/2007	\$ 925,000	\$ 936,671	101%
6	800	Hockaday	07370533306120000	6/14/2006	\$ 1,100,000	\$ 933,700	85%
7	800	Lakeside	07370520206250000	5/23/2006	\$ 1,590,000	\$ 1,432,767	90%
8	800	Lakeside	07370506106010000	10/15/2007	\$ 2,100,000	\$ 1,834,900	87%
9	800	Lakeside	07370520104190000	8/17/2005	\$ 950,000	\$ 734,720	77%
10	800	Lakeside	07370506106050000	7/31/2006	\$ 1,220,000	\$ 1,161,700	95%
11	800	Hockaday	07370528402050000	9/25/2006	\$ 1,300,000	\$ 847,336	65%
12	800	Hockiday	07370528103030000	1/12/2007	\$ 1,250,000	\$ 949,760	76%
13	800	Hockaday	07370528105050000	8/17/2007	\$ 935,000	\$ 1,339,251	143%
14	800	Somers	07383435203010000	8/3/2006	\$ 1,300,000	\$ 1,010,520	78%
15	800	Lakeside	07370520205190000	8/29/2007	\$ 1,230,000	\$ 1,832,900	149%
16	800	Hockiday	07370528101110000	7/12/2007	\$ 1,076,300	\$ 966,200	90%
17	800	Hughs	07370528101090000	8/8/2007	\$ 999,000	\$ 857,745	86%
18	800	Hockaday	07370528105140000	10/29/2007	\$ 687,500	\$ 877,293	128%
19	800	Lakeside	07370517104200000	8/16/2006	\$ 750,000	\$ 889,145	119%
20	800	Hughs	07370527201090000	9/24/2004	\$ 850,000	\$ 901,377	106%
21	800	Somers	07383435203050000	5/3/2006	\$ 1,500,000	\$ 1,245,483	83%
22	800	Somers	07383426101050000	10/5/2006	\$ 1,050,000	\$ 110,455	11%
23	800	Hockaday	07370533202090000	8/8/2007	\$ 1,275,000	\$ 1,234,730	97%
24	800	Lakeside	07370527201030000	9/29/2006	\$ 2,525,000	\$ 2,008,153	80%
25	800	Somers	07383426202010000	7/13/2007	\$ 1,300,000	\$ 1,098,700	85%
26	800	Hockaday	07370528402130000	9/1/2006	\$ 1,145,000	\$ 1,147,039	100%
27	800	Hockiday	07370528101170000	9/25/2007	\$ 1,580,000	\$ 1,579,800	100%
28	800	Somers	07383435203070000	6/28/2006	\$ 3,150,000	\$ 2,725,017	87%
29	800	Somers	07383426208030000	2/16/2006	\$ 3,800,000	\$ 3,815,230	100%
30			Average		\$ 1,367,243	\$ 1,250,315	93%

Out of the 28 sales:

Seven of the properties sold for **less than their tax assessed values**;

- Seven properties sold **within 5% of their assessed value** and;
- **75% of the properties sold for more than their tax assessed values.**

On average, the tax assessed values, originally determined by the State of Montana's DOR, are 7% **below** the actual sales prices.

An analysis of the sales **excluded** from the original analysis indicates that of the outlier sales:

- three properties sold for **less** than their tax assessed values,
- fourteen properties sold for **more** than 5% above their tax assessed values.

On average, the properties excluded due to their anomalies sold for 19.56% **more** than the tax assessed value as established by the State of Montana's DOR.

Summary. Based upon the number of available sales, it appears that the data supports the methods originally employed by Montana's Department of Revenue in accurately determining property values in Area 800 on Flathead Lake and indicates **that the inclusion of "all" sales would produce an inaccurate value conclusion higher than that currently established by the DOR.**

Standards

Due to the wide variety of laws in fifty states and their numerous political units combined with varying levels of training, not all tax districts across the United States are mandated to follow the requirements of USPAP. In general, there are tax assessors that do not follow USPAP when determining property values. However, in an effort to help standardized mass appraising, the Appraisal Foundation created Standard 6.

According to USPAP Standard 6 a mass appraisal must include:

- 1. identifying properties to be appraised;*
- 2. defining market area of consistent behavior that applies to properties;*
- 3. identifying characteristics (supply and demand) that affect the creation of value in that market area;*
- 4. developing a model structure that reflects the relationship among the characteristics affecting value in the market area;*
- 5. calibrating the model structure to determine the contribution of the individual characteristics affecting value;*
- 6. applying the conclusions reflected in the model to the characteristics of the property(ies) being appraised; and*
- 7. reviewing the mass appraisal results.*

Standards Rule 6-1

In developing a mass appraisal, an appraiser must:

- (a) be aware of, understand, and correctly employ those recognized methods and techniques necessary to produce a credible mass appraisal;*

Summary. The appraisal standards and methods originally utilized by the DOR follow with the steps listed in Standard Rule 6. If the DOR were to use “all” sales as ordered by the Court, their use will produce less credible results.

- The use of non-credible or misleading information is prohibited by the standards (USPAP and IAAO).
- The Court is requiring the DOR to violate typical appraisal standards and methodologies.

Conclusion

After reviewing the original data, modeling, and valuation methods used by the inclusion of “all” sales I have reached the following conclusions:

- The data included in the original analysis for 2008 already included “all” data (every sale in area 800 on Flathead lake). **No sales were excluded from consideration and analysis.**
- After **analyzing all** sales the original mathematical models indicated that 17 sales were anomalies. The outlier sales were further researched and various models re-run to see if their inclusion or exclusion produced more accurate results. The additional modeling indicated that for various reasons 17 sales should be excluded which then produced more reliable value conclusions. **In other words, all data was considered but not all data was relevant or applicable to valuing a residential lot on the lake.**
- Overall the data I have reviewed is accurate and appears to support the conclusions originally reached by Montana’s Department of Revenue.
- The methods originally employed by the DOR follow the Uniform Standards of Appraisal Practice and standard practices for assessors.
- The Court’s requirement for the use of “all” sales in the final statistical model **reduces the credibility** of the model’s output and creates a conflict with state licensing laws and the Uniform Standards of Appraisal Practice by forcing the inclusion of potentially misleading information in a value conclusion.
- Inclusion of “all” sales, as required by the court, will produce a higher tax assessed value for all waterfront properties in Area 800 on Flathead Lake for the year 2008 and beyond.

Limitations

This document is not an appraisal. I have not reached a value conclusion regarding any identified property in Montana. This document is a result of my reviewing data supplied by the DOR, FlexMLS, and the Cadastral system. This document does not provide a guarantee of the data nor that all applicable data was provided to me for my analysis. If additional data is discovered at a later date I reserve the right to change my opinions.

RICHARD HAGAR

Richard J. Hagar, SRA
May 15, 2020



EXPERT REPORT

By Scott Williams, Regional Manager Property Assessment
Division, Montana Department of Revenue

The purpose of this report is to calculate a new valuation model, in response to the Court's Findings of Fact and Conclusions of Law, requiring all sales within NBHD 800 be utilized in the valuation model for the affected parcels, including the valuation of 433 Caroline Point, Lakeside Montana 59922.

The Class Representatives initially made the argument that DOR had not attained 100% of market value, and in fact DOR was overvaluing properties due to the lack of relying upon negative influences within the valuation model. At trial, the Class Representatives changed their argument to claim that the Department was not attaining 100% of market value due to not utilizing all sales that had occurred within the neighborhood and by excluding outlier sales in the 2008 modeling process for Neighborhood 800. The Court has ordered that all sales must be utilized, and outliers are to be added back to that model.

Overview of Mr. Williams' experience

I have been employed by the Montana Department of Revenue for 32 years, with the past 28 as Region Manager, which entails the management of Western Montana for the Department. I am also a Certified General Real Estate Appraiser, a member of the International Association of Assessing Officers (IAAO), and a certified state instructor with the IAAO. I have testified as an expert before multiple County Tax Appeal Boards as well as numerous times before the Montana Tax Appeal Board. My region entails more than 300,000 parcels of residential, commercial, agricultural and timber properties. I have extensive experience in mass appraisal and have completed multiple statistic and appraisal statistics course work and am also certified to instruct IAAO Course 312 Commercial/Industrial Modeling Concepts.

Issues in the real estate market as they affect mass appraisal

The real estate market suffers from being an imperfect marketplace; and the fact remains that the 2008 market for recreational residential waterfront property in the Flathead was seeing frantic activity during that time. Properties were being listed and sold in the same time(s) with drastic differences of price variance due to listing agents, buyers and sellers acting in the desperate market to capture their piece of the "Montana Dream". Every buyer and seller are different and negotiate differently and, in this market, there was no evidence of a slowdown, even with the reports of a recession occurring, and very few market indicators such as pool, depth, topography, exposure was apparent in the market. Nearly identical properties sold for drastically different prices and properties that one would assume should sell for a discount due to topographical issues, depth of pool issues, etc., were trading for prices typically reserved for the "ideal lake lot". The Department took all of this into consideration when it established, stratified and calibrated its model for valuing these properties. The Department was also aware of the pending recession and the effects that it would have on the real estate market but were bound by statute as to the valuation date and the limits that would have on market value.

The Department undertook a systematic approach that it has used for numerous appraisal cycles beginning in 1986 and had a uniform application of its methods in its application of the model. The Department was aware of and understood the market conditions which were present. The Department identified through market analysis, the characteristics of the properties that were relevant in the marketplace (unit of comparison; mainly being frontage of land, but also the depth of the lots, shape, topography privacy, pool depth, etc.) as well as other factors that were apparent in the market that

could be grasped from the sales; recall a buyer frenzy was present in the marketplace at the time of this appraisal cycle.

During the 2008 reappraisal the Department was tasked with valuing more than 900,000 properties in the state of Montana at 100% of market value in what is defined as a mass appraisal. A mass appraisal is the "process of valuing a universe of properties as of a given date using standard methodology, employing common data, and allowing for statistical testing".¹ The department has done that by the methods described in the proceeding report as they pertain to the development and reporting of mass appraisal results for real property. Our process was compliant to Montana Statutes and Montana Administrative Rules and involved standard methodology employing common data that allows for statistical testing such as ratio studies, as well as model testing on hold-out and outlier sales.

The Department was aware of and understood the market conditions which were present, including the pending recession and the effect that it would have on market values post valuation date. The Department identified through market analysis, the characteristics of the properties that were relevant in the marketplace (unit of comparison; mainly being frontage of land, but also the depth of the lots, shape, topography privacy, pool depth, etc.) as well as other factors that were apparent in the market that could be grasped from the sales originally used; recall a buyer frenzy was present in the marketplace at the time of this appraisal cycle; this was compounded with the largest recession in current history which was starting and in full affect in 2010/2011 in Montana which made the values seem out of line for taxpayers who filed.

The IAAO Standard on Mass Appraisal of Real Property - 2017 states in 4.1 Valuation Models the following²:

4.1 Valuation Models

Any appraisal, whether single-property appraisal or mass appraisal, uses a model, that is, a representation in words or an equation of the relationship between value and variables representing factors of supply and demand. Mass appraisal models attempt to represent the market for a specific type of property in a specified area. Mass appraisers must first specify the model, that is, identify the supply and demand factors and property features that influence value, for example, square feet of living area. Then they must calibrate the model, that is, determine the adjustments or coefficients that best represent the value contribution of the variables chosen, for example, the dollar amount the market places on each square foot of living area. Careful and extensive market analysis is required for both specification and calibration of a model that estimates values accurately. Mass appraisal models apply to all three approaches to value: the cost approach, the sales comparison approach, and the income approach.

Valuation models are developed for defined property groups. For residential properties, geographic stratification is appropriate when the value of property attributes varies

¹ USPAP 2008-2009 Edition

² This standard replaces the January 2012 *Standard on Mass Appraisal of Real Property* and is a complete revision. The 2012 *Standard on Mass Appraisal of Real Property* was a partial revision that replaced the 2002 standard.

significantly among areas and each area is large enough to provide adequate sales. It is particularly effective when housing types and styles are relatively uniform within areas. Separate models are developed for each market area (also known as economic or model areas). Subareas or neighborhoods can serve as variables in the models and can also be used in land value tables and selection of comparable sales. (See Mass Appraisal of Real Property [Gloudemans 1999, 118–120] or Fundamentals of Mass Appraisal [Gloudemans and Almy 2011, 139–143] for guidelines on stratification.) Smaller jurisdictions may find it sufficient to develop a single residential model. (IAAO, 2017)

Outlier/Holdout/Control Sales

The Department had a total of 46 sales that occurred in the neighborhood prior to 7/1/2008 that it verified and examined, as specified in the model. During the modeling process 17 of these sales were removed due to being either an outlier or utilized as a control or holdout sale.

Outliers. Outliers are properties with very high or low sales ratios. They may result from poor or outdated appraisals, non-arm's length sales, or a mismatch between the property that sold and the property appraised, or represent sales of dissimilar estate type properties, which was the case in this neighborhood. Particularly when the sample is small, outliers can distort ratio studies and should be reviewed carefully. One reasonable approach is to flag for review all ratios that lie above or below selected cut-off points, say .25 and 2.00. Another approach is to review all ratios that fall more than two standard deviations from the mean ratio (usually about 5 percent of the ratios).³

This was the process used in 2008 with the sales which were considered outliers. They all had a significant deviation to the standard error (deviation) of >2; some were significantly greater than 2 times the SEE (Standard Error of Estimate) and closer to 3 times. We have no control of the SEE as it can be viewed as a measure of the spread of the numbers in the sales data set from its mean value and is representative of the range of sales. As I testified the sales ranged from \$750K - \$3.8M and therefore the SEE is going to be large and the only way to lower it is to lower the sales range and to remove sales that are a disproportionate distance to the mean. It is a measure used to quantify whether the set is clustered around the mean or dispersed. In Peretti this was the criticism of the statistical expert in that he threw out sales to arrive at a lower value for the taxpayer to the detriment of the model and the market data. "The purpose of the model used by the DOR, however, is to find a statistical average of the actual land sales prices, not create an elegant graph with a carefully-selected, closely grouped data points." Peretti MTAB.

Regression Outliers

Outliers in MRA are properties whose estimated values differ from sales by unusually large amounts. When regression residuals are normally distributed, two-thirds of sales prices can be expected to fall within one SEE (Standard Error of the Estimate) of their estimated values, 95 percent within two SEE, and 99 percent within three SEE.

It is a good practice to examine critically all residuals that exceed more than two standard errors.

³ IAAO, 1990 *Property Appraisal and Assessment Administration*, p. 137.

Outliers can also result from unusual property characteristics or an unusual combination of characteristics. In any model, outliers are always expected. In many cases, they provide clues as to additional variables or other refinements that might improve the model. One should always strive to fit the model to the property base, not manipulate the data to improve the model artificially⁴.

The sales originally excluded were three or more deviations from the standard deviation (or Error) and therefore without using extreme judgmental manipulation to artificially improve the model performance, they were excluded. These sales were of Estate Properties and not considered comparable to the base average lot. Two of the sales excluded were also extreme topographical lots that were more than two deviations from the mean. These anomaly properties are valued outside of the model using paired sales if market evidence exists.

The table below represents the outlier sales not used in the 2008 modeling process for neighborhood 800, sales price represents the actual price and is not adjusted for market conditions that occurred, adjusted price per ff represents the land only portion of the sales price per front foot.

Sale #	Geocode	Sale Date	Sale Price	Lot Width	Lot Depth	Adjusted Price Per FF
OL1	07370518103110000	9/22/2005	\$1,975,000	93	247	\$15,554
OL2	07370517101040000	10/3/2005	\$8,200,000	437	354	\$14,642
OL3	07370517101010000	7/23/2007	\$6,500,000	520	487	\$12,506
OL4	07370520206210000	8/24/2006	\$389,500	15	810	\$18,917
OL5	07370520104130000	6/26/2007	\$4,850,000	200	244	\$14,319
OL6	07370528103050000	12/15/2006	\$3,000,000	200	665	\$13,926
OL7	07370528103050000	7/29/2005	\$2,500,000	200	665	\$11,801
OL8	07370533101020000	1/28/2005	\$1,220,000	322	461	\$2,595
OL9	0737053330511 and 13	8/8/2005	\$636,000	216	283	\$3,084

- 9 sales were considered outliers; 7 sold in excess to expected price per front foot based upon the discussion above, 2 of which were prior sales of the same property, they would have represented the same sales price (time trended) for the same property and would statistically add too much weight to the property characteristics. Two were also extreme topographical sales with 1 not having usable frontage at the time of sale and not considered good representations of the market to value the subject set. Their removal resulted in the model more accurately correlating the actions of typical residential waterfront buyers. Below is a summary of each sale as to why it was considered an outlier (OL) to the model:
 - OL Sale #1 - 2 houses with a high sales ratio greater than 2 Standard Error of Estimate
 - OL Sale #2 – multiple parcels of land, sold 2004 for \$4m, greater than 2 SEE
 - OL Sale #3 – multiple parcels, house given away, purchased to create estate
 - OL Sale #4 – only 15 feet of frontage, only room for dock on frontage, insignificant statistically
 - OL Sale #5 – 2 furnished houses included unable to discern value of sfr/furnishings >2 SEE
 - OL Sale #6 – 2 houses, resale of sale #7 for +20% over 16 months
 - OL Sale #7 – 2 houses, previously sold in 2004 for \$1.58m, +58% over 12 months
 - OL Sale #8 – unusable frontage when sold, cliff with no access to water, extreme topo

⁴ IAAO, 1990 Property Appraisal and Assessment Administration, p. 383/384.

- OL Sale #9 – multiple parcel sale, extreme topographic issues,

STANDARD ON MASS APPRAISAL OF REAL PROPERTY—2017

5.3 Holdout Samples

Holdout samples are validated sales that are not used in valuation but instead are used to test valuation performance. Holdout samples should be randomly selected with a view to obtaining an adequate sample while ensuring that the number of sales available for valuation will provide reliable results for the range of properties that must be valued (holdout samples of 10 to 20 percent are typical). If too few sales are available, later sales can be validated and used for the same purpose. (For a method of using sales both to develop and test valuation models, see "The Use of Cross-validation in CAMA Modeling to Get the Most Out of Sales" (Jensen 2011))

Since they were not used in valuation, holdout samples can provide more objective measures of valuation performance. This can be particularly important when values are not based on a common algorithm as cost and MRA⁵ models are. Manually assigning land values, for example, might produce sales ratio statistics that appear excellent but are not representative of broader performance for both sold and unsold properties. Comparable sales models that value a sold property using the sale of a property as a comparable for itself can produce quite different results when tested on a holdout group.⁶

Properly validated later sales can provide follow-up performance indicators without compromising the number of sales available for valuation. (International Association of Assessing Officers, 2017)

The table below represents the control or holdout sales not used in the 2008 modeling process for neighborhood 800, sales price represents the actual price and is not adjusted for market conditions that occurred, adjusted price per ff represents the land only portion of the sales price per front foot.

Sale #	Geocode	Sale Date	Sale Price	Lot Width	Lot Depth	Adjusted Price Per FF
HO1	07383426209050000	8/30/2005	\$895,000	99	273	\$8,109
HO2	07383426306400000	5/5/2006	\$1,160,000	133	324	\$7,389
HO3	07383426303090000	7/18/2007	\$1,100,000	99	289	\$8,595
HO4	07370506402050000	8/24/2006	\$900,000	97	115	\$7,937
HO5	07370507203050000	7/1/2006	\$1,800,000	137	165	\$9,295
HO6	07370520102130000	1/17/2006	\$2,200,000	212	282	\$7,819
HO7	07370521201010000	6/13/2008	\$1,185,000	122	1035	\$9,387
HO8	07370521304030000	5/5/2006	\$2,380,000	315	272	\$7,326

⁵ Multiple Regression Analysis

⁶ STANDARD ON MASS APPRAISAL OF REAL PROPERTY—2017

- The remaining 8 sales were utilized to test the model output as control sales. They were deemed to have uncertain aspects to their transactions such as multiple lots and multiple houses and may have not been available in our system in enough time to be included in the model. Therefore, these sales were removed or not used if not available at the time of analysis and used as “control” sales to calibrate the model and to test accuracy of the model, these are also termed Holdout Samples by the IAAO.

Based upon the Court’s order, a new model was created in which all the outlier and holdout sales were to be added back in for use in the valuation of the represented properties.

Original Model Pricing

The original regression formula in the model is represented by a constant of \$131,187; like an “ante” in that it is the statistical price point to enter the market, and a slope of the regression line which is the X1 coefficient or \$7653 and is the mathematical center of the sales points presented by a trend line.

When calculated in the model, each property is associated with a base size, in this case 100 feet of frontage and a base depth which in this neighborhood is represented by the median lot depth of all frontage properties within the neighborhood; 300 feet. Each individual property then received an adjustment for the depth factor (applied to the entire property value as opposed to just the X3 coefficient) and any other positive or negative influences that may be present such as submarket area, topography, exposure to the lake, beach, etc.⁷ The base size is calculated by adding the constant value \$131,187 to 100 units (front feet) @ \$7653 per unit and then dividing by the base size to arrive at the “base rate”.

100 feet of frontage is the typical frontage required by zoning in the area and is the established “base lot” utilized by the Department in the base lot model.

$$\$131,187 + \$765,300 = \$896,487 / 100 = \$8,965 \text{ base price. (rounded)}$$

Each additional front foot on the subject(s) property is then calculated by the represented slope or \$7653 per front foot.

TYPE	1/FR1	FR2
	Frontage	Depth
Base Size	100	300
Base Rate	\$ 8,964.58	\$ 17,228.83
Adjustment	\$ 7,652.70	\$ 7,652.70
Influence +/-	\$ 826,425	

New Model Pricing from as Ordered by Court

This model represents all the sales including the original 29 used in the 2008 model for Neighborhood 800 and adding the 8 holdout sales and the 9 outlier sales (17 total). Of the 9 outliers, 2 have negative variables applied and were excluded from the original model due to having drastically poor frontage, 6 have a

⁷ These adjustments are made within the individual property record maintained in the CAMA system and are typically calculated by paired sales analysis outside of the regression model.

positive variable applied due to being excess of the typical properties, two of the outliers have no variables applied (albeit 1 is a 15-foot lot which is statistically insignificant). I have also accounted for the negative aspects in the 29 original sales.

The regression formula in this model is represented by a constant of \$7,239, and a slope of the regression line which is the X1 coefficient or \$9582 and is the mathematical center of the sales points presented by a trend line. By contrast the constant value is nominal due in part to the required inclusion of a 15-foot sale in the model and the increase of the representative slope of the regression line due to the inclusion of the estate type outlier sales.

When calculated in the model, each property is associated with the same base size, in this case 100 feet of frontage and a base depth which in this neighborhood is represented by the median lot depth of all frontage properties within the neighborhood; 300 feet. Each individual property then received an adjustment for the depth factor (applied to the entire property value as opposed to just the X3 coefficient) and any other positive or negative influences that may be present such as submarket area, topography, exposure to the lake, beach, etc.⁸ The base size is calculated by adding the constant value \$7,239 to 100 units (front feet) @ \$9582 per unit and then dividing by the base size to arrive at the "base rate".

$$\$7,239 + \$958,200 = \$965,439 / 100 = \$9,655 \text{ base price. (rounded)}$$

The base lot *increases* each subject properties' first 100 feet by \$69,000 in value.

Each additional front foot on the subject(s) property is then calculated by the represented slope or \$9582 per front foot which is an increase of the previous model of \$1,930 per front foot. This would represent an increase in value for all class members and which may or may not comport to market value as extraordinary sales were included which violates the appraisal standards discussed above.

TYPE	1/FR1	FR2
	Frontage	Depth
Base Size	100	300
Base Rate	\$ 9,655	\$ 18,458
Adjustment	\$ 9,582	\$ 9,582
Influence +/-	\$ 880,336	

We are now looking at a potential repeat of 2008 and the great recession that occurred. The reappraisal cycle has once again changed, and the market has undoubtedly increased since the previous recession occurred. The Court's conclusion will once again increase values on properties that will be most affected by the current economic crisis occurring as another recession looms. Recall my testimony at trial that we should expect another recession 'within a year or two'. It appears that the recession is upon us. .

⁸ These adjustments are made within the individual property record maintained in the CAMA system and are typically calculated by paired sales analysis outside of the regression model.

An argument was made that equated the numerous AB-26 filings about value to somehow indicate a failure of the process. Values had increased and continued to increase through 2009. In the news, people were reading that values were going down across the US, but they received assessments in 2009 and their 2008 values were increasing over the previous assessment (2002) to which they appealed in massive numbers statewide, higher than any time in the past. The number of reviews were not due to the failure of the model to value the properties correctly, but in the misinformation they were receiving from the media about the recessions effect on value, conflicting with the reality through 2009. The same result is likely given the current economic conditions.

In conclusion, the result of the District Court's Order dictating the model use all the of the sales available will result in an increase in the valuation of each of the properties in the class. The DOR does not have any part in the taxation of these properties, but it is a rational conclusion that the taxes for each property would similarly increase for that cycle.

NBHD 800 Post hearing
Additional outlier and holdout sales added

Land Valuation Model NBHD 800													TYPE	1/FR1	FR2		
NBHD		descripti Somers Lakeside NBHD 800 FF										CALP	Base Size	Frontage	Depth		
Base rate for frontfoot is standard lot times x1 coefficient + constant divided by standard lot													Base Rate	\$	9,655	\$	18,458
Adjustment is X1 coefficient Frontage; X2 coefficient Standard Depth Formula; X3 coefficient influence													Adjustment	\$	9,582	\$	9,582
													Influence +/-	\$	880,336		
Valuation date		Jun-08										Monthly rate of change				0.20%	
Trend date		Jul-07										Yearly rate of change				2.4%	
Previous valuation date ti		Jan-02															
NBHD	Geocode	Sale Date	Months	Lot	Lot	Lot	Standard	Influe	2003 AV	SP/AV	Time	Time	Trended	Improve	Adjusted	Sale	Adjusted
			from														
			Time	7/08							"Y"						
			"X"				"X1"	"X2"	"X3"	Sale Price	value if present						
8000	07370506101050000	7/20/2004	31	36	69	350	69	1.1	0	300000	214791	1.40	\$ 750,000	0	\$ 750,000	\$	10,870
8000	07383426208080000	4/28/2006	52	15	70	380	70	1.1	0	950000	222630	4.27	\$ 978,627	0	\$ 978,627	\$	13,980
8000	07370506406110000	8/29/2007	68	-1	75	428	75	1.2	-1	750000	373499	2.01	\$ 748,550	132786	\$ 615,764	\$	8,210
8000	07370528105150000	8/24/2006	56	11	80	659	80	1.5	0	995000	444593	2.24	\$ 1,017,288	142463	\$ 874,825	\$	10,935
8000	07383426210010000	7/16/2007	67	0	84	181	84	0.8	0	925000	322989	2.86	\$ 925,863	162594	\$ 763,269	\$	9,087
8000	07370533306120000	6/14/2006	53	14	86	237	86	0.9	0	1100000	390635	2.82	\$ 1,129,773	206529	\$ 923,244	\$	10,735
8000	07370520206250000	5/23/2006	53	14	90	332	90	1.1	1	1590000	516217	3.08	\$ 1,635,262	295417	\$ 1,339,845	\$	14,887
8000	07370506106010000	10/15/2007	69	-3	92	398	92	1.2	1	2100000	752669	2.79	\$ 2,089,500	509363	\$ 1,580,137	\$	17,175
8000	07370520104190000	8/17/2005	44	23	100	200	100	0.8	0	950000	175775	5.40	\$ 994,523	0	\$ 994,523	\$	9,945
8000	07370506106050000	7/31/2006	55	12	100	262	100	0.9	0	1220000	438137	2.78	\$ 1,249,280	236687	\$ 1,012,593	\$	10,126
8000	07370528402050000	9/25/2006	57	10	100	237	100	0.9	0	1300000	317721	4.09	\$ 1,326,433	126146	\$ 1,200,287	\$	12,003
8000	07370528103030000	1/12/2007	60	7	100	336	100	1.1	0	1250000	229100	5.46	\$ 1,266,500	0	\$ 1,266,500	\$	12,665
8000	07370528105050000	8/17/2007	68	-1	100	352	100	1.1	0	935000	412485	2.27	\$ 933,940	142880	\$ 791,060	\$	7,911
8000	07383435203010000	8/3/2006	55	12	104	350	104	1.1	0	1300000	292176	4.45	\$ 1,330,940	55000	\$ 1,275,940	\$	12,269
8000	07370520205190000	8/29/2007	68	-1	109	398	109	1.2	0	1230000	574827	2.14	\$ 1,227,622	447283	\$ 780,339	\$	7,159
8000	07370528101110000	7/12/2007	66	1	110	287	110	1.0	0	1076300	312189	3.45	\$ 1,077,592	94979	\$ 982,613	\$	8,933
8000	07370528101090000	8/8/2007	67	0	110	260	110	0.9	-1	999000	176001	5.68	\$ 998,467	0	\$ 998,467	\$	9,077
8000	07370528105140000	10/29/2007	70	-3	124	548	124	1.4	-1	687500	311836	2.20	\$ 683,421	0	\$ 683,421	\$	5,511
8000	07370517104200000	8/16/2006	56	11	130	186	130	0.8	-1	750000	184040	4.08	\$ 767,200	0	\$ 767,200	\$	5,902
8000	07370527201090000	9/24/2004	33	34	132	152	132	0.7	0	850000	209868	4.05	\$ 908,140	0	\$ 908,140	\$	6,880
8000	07383435203050000	5/3/2006	52	15	132	300	132	1.0	0	1500000	323950	4.63	\$ 1,500,000	85000	\$ 1,415,000	\$	10,720
8000	07383426101050000	10/5/2006	57	10	145	300	145	1.0	0	1050000	248375	4.23	\$ 1,070,650	0	\$ 1,070,650	\$	7,384
8000	07370533202090000	8/8/2007	67	0	152	219	152	0.9	0	1275000	349263	3.65	\$ 1,274,320	136729	\$ 1,137,591	\$	7,484
8000	07370527201030000	9/29/2006	57	10	173	161	173	0.7	0	2525000	840588	3.00	\$ 2,525,000	602793	\$ 1,922,207	\$	11,111
8000	07383426202010000	7/13/2007	66	1	188	51	188	0.4	-1	1300000	334208	3.89	\$ 1,301,473	185163	\$ 1,116,310	\$	5,938

NBHD 800 Post hearing
Additional outlier and holdout sales added

8000 07370528402130000	9/1/2006	56	11	194	296	194	1.0	-1	1145000	386972	2.96	\$ 1,170,114	115344	\$ 1,054,770	\$ 5,437
8000 07370528101170000	9/25/2007	69	-2	200	210	200	0.8	0	1580000	331872	4.76	\$ 1,574,207	99572	\$ 1,474,635	\$ 7,373
8000 07383435203070000	6/28/2006	54	13	241	575	241	1.4	1	3150000	668076	4.72	\$ 3,150,000	250000	\$ 2,900,000	\$ 12,033
8000 07383426208030000	2/16/2006	50	17	304	474	304	1.3	1	3800000	427386	8.89	\$ 3,800,000	0	\$ 3,800,000	\$ 12,500
8000 07383426209050000	8/30/2005	44	23	99	273	99	1.0	0	895000	499500	1.79	\$ 936,170	133340	\$ 802,830	\$ 8,109
8000 07383426306400000	5/5/2006	52	15	133	324	133	1.0	0	1160000	404284	2.87	\$ 1,194,413	211640	\$ 982,773	\$ 7,389
8000 07383426303090000	7/18/2007	67	0	99	289	99	1.0	0	1100000	895351	1.23	\$ 1,100,880	250000	\$ 850,880	\$ 8,595
8000 07370506402050000	8/24/2006	56	11	97	115	97	0.6	0	900000	263020	3.42	\$ 920,160	150291	\$ 769,869	\$ 7,937
8000 07370507203050000	7/1/2006	54	13	137	165	137	0.7	0	1800000	779731	2.31	\$ 1,846,680	573215	\$ 1,273,465	\$ 9,295
8000 07370520102130000	1/17/2006	49	18	212	282	212	1.0	0	2200000	935050	2.35	\$ 2,281,107	623413	\$ 1,657,694	\$ 7,819
8000 07370521201010000	6/13/2008	77	-10	122	1035	122	1.9	0	1185000	572277	2.07	\$ 1,160,273	15119	\$ 1,145,154	\$ 9,387
8000 07370521304030000	5/5/2006	52	15	315	272	315	1.0	0	2380000	890795	2.67	\$ 2,450,607	142880	\$ 2,307,727	\$ 7,326
8000 07370518103110000	9/22/2005	45	22	93	247	93	0.9	0	1975000	1383045	1.43	\$ 2,062,953	616445	\$ 1,446,508	\$ 15,554
8000 07370517101040000	10/3/2005	45	22	437	354	437	1.1	1	8200000	4467793	1.84	\$ 8,559,160	2160687	\$ 6,398,473	\$ 14,642
8000 07370517101010000	7/23/2007	67	0	520	487	520	1.3	1	6500000	5278844	1.23	\$ 6,503,033	0	\$ 6,503,033	\$ 12,506
8000 07370520206210000	8/24/2006	56	11	15	810	15	1.6	0	389500	240300	1.62	\$ 398,225	114471	\$ 283,754	\$ 18,917
8000 07370520104130000	6/26/2007	66	1	200	244	200	0.9	1	4850000	2474875	1.96	\$ 4,860,993	1997213	\$ 2,863,780	\$ 14,319
8000 07370528103050000	12/15/2006	59	8	200	665	200	1.5	1	3000000	823971	3.64	\$ 3,045,000	259889	\$ 2,785,111	\$ 13,926
8000 07370528103050000	7/29/2005	43	24	200	665	200	1.5	1	2500000	823971	3.03	\$ 2,620,167	259889	\$ 2,360,278	\$ 11,801
8000 07370533101020000	1/28/2005	37	30	322	461	322	1.2	-1	1220000	457861	2.66	\$ 1,293,363	457861	\$ 835,502	\$ 2,595
8000 0737053330511 and 13	8/8/2005	43	24	216	283	216	1.0	-1	636000	466389	1.36	\$ 666,189	0	\$ 666,189	\$ 3,084
Average	09/2006	56.21	10.76	154.59	349.78	154.59	1.05		1727680	705216	3.17	\$ 1,767,480	260719	\$ 1,506,760	\$ 9,944
Minimum	07/2004	30.63	-10.43	15.00	51.00	15.00	0.41		300000	175775	1.23	\$ 398,225	0	\$ 283,754	\$ 2,595
Maximum	06/2008	77.40	36.33	520.00	1035.00	520.00	1.86		8200000	5278844	8.89	\$ 8,559,160	2160687	\$ 6,503,033	\$ 18,917
Median	08/2006	55.77	11.20	123.00	298.00	123.00	1.00		1220000	408385	2.87	\$ 1,238,451	139596	\$ 1,062,710	\$ 9,341
Sum									79473300	32439925	145.73	\$ 81,304,058	11993081	\$ 69,310,977	\$ 457,440
Standard Deviation		10.51	10.51	96.62	188.11	96.62	0.27		1510081	983218	1	\$ 1,535,947	432600	\$ 1,275,839	\$ 3,502
Standard Lot				100.00	300.00	100	1.0								\$ 965,463

NBHD 800 Post hearing
Additional outlier and holdout sales added



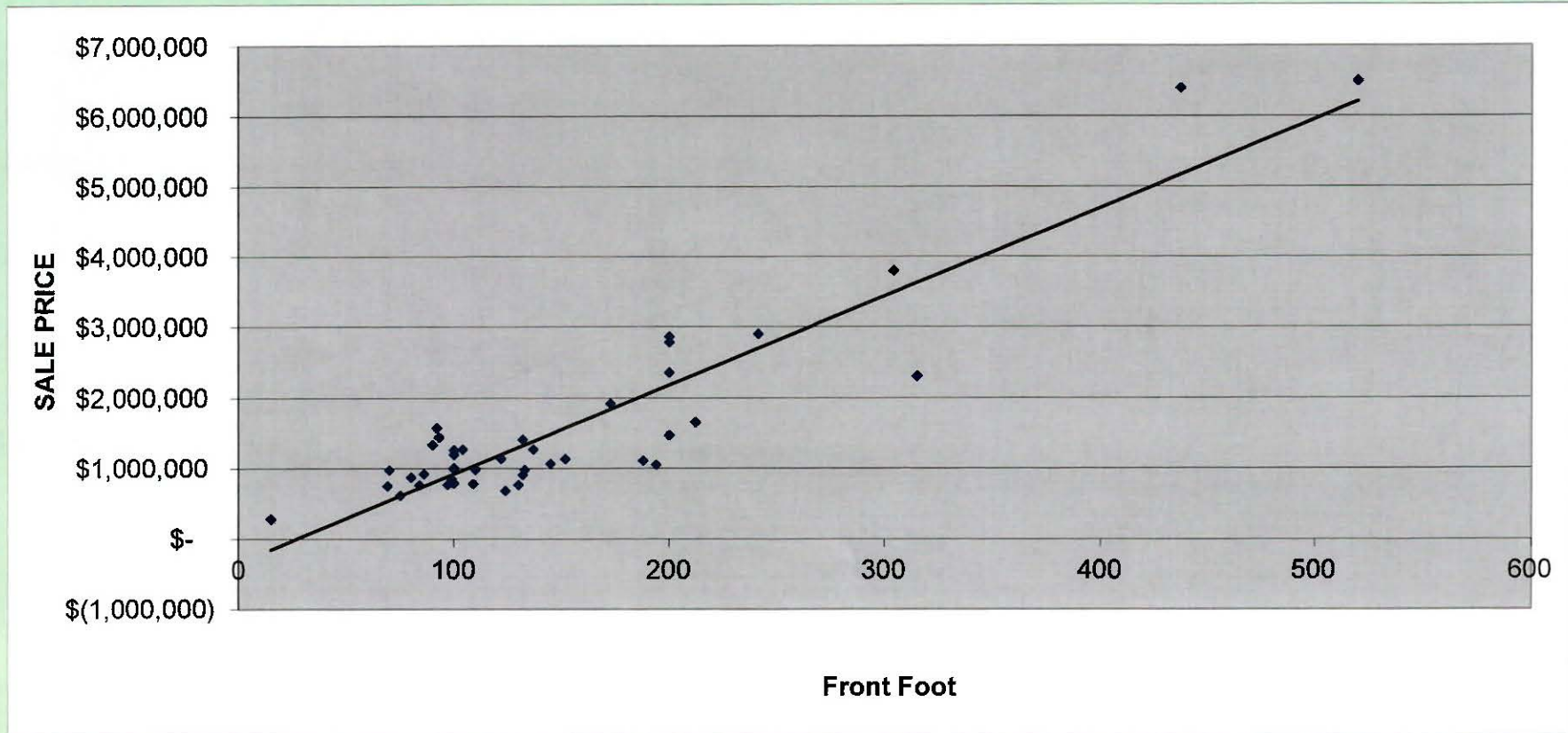
LAND SUMMARY OUTPUT

Regression Statistics	
Multiple R	0.9392346
R Square	0.8821617
Adjusted R Square	0.8737447
Standard Error	453336.62
Observations	46

ANOVA					
	df	SS	MS	F	Significance F
Regression	3	6.5E+13	2E+13	104.8069	1.6E-19
Residual	42	8.6E+12	2E+11		
Total	45	7.3E+13			

	Coefficients	Standard Error	t Stat	P-value	Lower 95%	Upper 95%	Lower 95.0%	Upper 95.0%	Lower 95.0%	Upper 95.0%
Intercept	26968.743	301044	0.0896	0.929044	-580563	634500.3	-580563	###	0.96628154	0.9650682 0.9663
X Variable 1	9582.2353	730.489	13.118	1.9E-16	8108.05	11056.42	8108.05	11056	0	0 0
X Variable 2	-19729.25	260017	-0.0759	0.939877	-544465	505006.5	-544465	###		
X Variable 3	880336.3	119565	7.3628	4.42E-09	639044	1121629	639043.8	###		

NBHD 800 Post hearing
Additional outlier and holdout sales added



08:56:05

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IN THE DISTRICT COURT OF THE ELEVENTH
JUDICIAL DISTRICT OF THE STATE OF MONTANA
IN AND FOR THE COUNTY OF FLATHEAD

CAUSE NO. DV-10-073D

WILLIAM M. SOLEM, ELLEN G. SOLEM and JOHN DOES I-V,

Plaintiffs,

vs.

MONTANA DEPARTMENT OF REVENUE, a department of the
State of Montana,

Defendant.

DEPOSITION

OF

WILLIAM M. SOLEM

(Taken on Behalf of the Defendants)

Taken at Asa & Gilman Reporting, Inc.
22 Second Avenue, West, Suite 2200
Kalispell, Montana
Thursday, November 29, 2018 - 9:20 a.m.

Reported by Jolene Asa, RPR, and Notary Public
for the State of Montana, Flathead County

EXHIBIT QQQ (Page 1)

A P P E A R A N C E S

APPEARING ON BEHALF OF THE PLAINTIFFS:

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ngochis@mt.gov

ALSO PRESENT:

Ms. Ellen Solem

41

43

1 that, make a mass appraisal project out of it, and
 2 that kind of came through a little bit with the
 3 experts too.
 4 BY MR. WALL:
 5 **Q. So what I heard yesterday from your experts**
 6 **was that the Department should do some things**
 7 **differently, just, you know, broadly characterizing**
 8 **it, but that there's no guarantee that if they did**
 9 **those things differently that your property values are**
 10 **going to go down.**

11 A. Maybe not.

12 **Q. Isn't that the whole idea behind the**
 13 **lawsuit, though, is that you're overvalued?**

14 A. I think it's overvalued, and I would think
 15 that that would happen in the event that they went
 16 back and readjusted all of these properties, that
 17 you'd see the things go down. They've adjusted
 18 thousands already. What does that tell you? Does it
 19 tell you something is wrong with their computer model?
 20 I think it does.

21 **Q. It tells me they're trying to get it right**
 22 **is what it tells me.**

23 A. And they haven't. They haven't yet.

24 **Q. So what are your damages?**

25 MS. PARKIN: Objection to the extent it

1 **million dollars, and I've got a problem with that.**
 2 **I'm teasing.**

3 **Okay. Any other damages?**

4 A. For me?

5 **Q. Yeah.**

6 A. Well, I think everybody in the class has a
 7 similar damage problem.

8 **Q. The difference between what you paid and**
 9 **what you should have paid, up or down either way?**

10 A. Right.

11 MR. WALL: Okay. That's all I've got.

12 THE WITNESS: That's it?

13 MR. WALL: We can keep going if you want.

14 I'm getting paid by the hour. Nick, close your ears.

15 (Whereupon, the Deposition of WILLIAM M.

16 SOLEM was concluded at 10:21 a.m., and signature was
 17 reserved.)

42

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1 calls for a legal conclusion.

2 THE WITNESS: We're not to that phase yet
 3 that we've bifurcated this thing. We're talking about
 4 liability now.

5 BY MR. WALL:

6 **Q. Yeah. I'm still going to ask you what your**
 7 **damages are. That's not a legal conclusion. You can**
 8 **just testify as to what you're entitled to.**

9 A. The damages are the amount of taxes that
 10 I've paid over and above what the fair market value
 11 actually is.

12 **Q. What if your taxes go up as a result of the**
 13 **liability phase? Do you have any --**

14 A. I'll be glad to pay the taxes, then, if that
 15 happens. I have never objected to paying taxes as
 16 long as they're fair and reasonable.

17 **Q. You've protested them.**

18 A. I don't think they're fair and reasonable.
 19 I mean, how can your assessment go up a million
 20 dollars from 2002 to '8? It doesn't make any sense to
 21 me.

22 **Q. It seems like a First World problem to me.**

23 A. Pardon?

24 **Q. It seems like a First World problem to me.**
 25 **I bought this place for recreation. Now it's worth a**

REPORTER'S CERTIFICATE

2 State of Montana)

3 County of Flathead)

4 I, Jolene Asa, Registered Professional Reporter
 5 and Notary Public for the State of Montana, residing
 6 in Kalispell, Montana, do hereby certify:

7 THAT I did report the foregoing matter at the
 8 time and place stated in the above-entitled matter
 9 after having duly sworn WILLIAM M. SOLEM; and

10 THAT the foregoing pages constitute a true and
 11 accurate transcription of the testimony of WILLIAM M.
 12 SOLEM that was taken in shorthand by me and reduced to
 13 writing under my direction to the best of my ability;
 14 and

15 THAT I am not an attorney nor counsel of any of
 16 the parties, nor a relative or employee of any
 17 attorney or counsel connected with the action, nor
 18 financially interested in the action.

19 IN WITNESS WHEREOF, I have hereunto subscribed my
 20 name and affixed my seal on this ____ day of

21 _____, _____

22

23

24 (Page 3)

25

JOLENE ASA, RPR

CORRECTION PAGE

<u>PAGE</u>	<u>LINE</u>	<u>CORRECTION</u>
29	4	Kristen Juras

I have read the foregoing testimony and believe the same to be true, except for the corrections noted above.

DATED this 20th day of December,
2018.



WILLIAM M. SOLEM

WILLIAM M. SOLEM vs.

MONTANA DEPARTMENT OF REVENUE - DV-10-073D