

BEFORE THE STATE TAX APPEAL BOARD  
OF THE STATE OF MONTANA

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ROBERT S. FOSTER,	)	
	)	DOCKET NO.: PT-2011-19
Appellant,	)	
-vs-	)	FACTUAL BACKGROUND,
	)	CONCLUSIONS OF LAW,
THE DEPARTMENT OF REVENUE OF THE STATE OF MONTANA,	)	ORDER and OPPORTUNITY
	)	FOR JUDICIAL REVIEW
Respondent.	)	

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**Statement of Case**

Robert S. Foster (Taxpayer) appealed a decision of the Gallatin County Tax Appeal Board (CTAB) relating to the Department of Revenue's (DOR) valuation of property described as Lot 8A, Block 19 in the Armstrong Addition to the City of Belgrade, Montana. The Taxpayer argued the DOR overvalued the property for tax purposes, and seeks a reduction in value assigned by the DOR. The matter was heard before the State Tax Appeal Board on the record, without objection from the parties.

The Board having fully considered the testimony and exhibits from the record made before the Gallatin County Tax Appeal Board, and all matters presented to this Board, finds and concludes that:

**Issue**

The issue before this Board is whether the Department of Revenue valued the subject property appropriately for tax purposes for tax year 2011.

### Summary

Based on a preponderance of the evidence, the Board upholds the decision of the Gallatin County Tax Appeal Board.

### Evidence Presented

1. Robert S. Foster is the Taxpayer in this proceeding and, therefore, has the burden of proof.
2. The subject property is a vacant lot with the following legal description:  
Lot 8A, Block 19, Armstrong Addition to the City of Belgrade,  
Gallatin County, State of Montana. (Appeal Form)
3. The Taxpayer, Robert S. Foster, appeared on his behalf at the Gallatin CTAB hearing. (CTAB Transcript, Appeal Form.)
4. The DOR was represented at the CTAB hearing by Appraisers Richard Browning and Carole Rowe. (CTAB Transcript.)
5. For tax year 2011, the DOR originally valued the subject land at \$69,894 based upon the standard application of the neighborhood CALP for Belgrade. (DOR Supplement to Record, p.2.)
6. The Taxpayer filed a request for informal review (AB-26) on June 30, 2011 asking for an informal review meeting to provide additional information. (Appeal Form, AB26 Form.)
7. After review of the subject property, the DOR reduced the value to \$34,947 through the application of a 50 percent influence factor. (DOR Supplement to Record, pgs. 2 and 3, Haralson Affidavit, p. 5.)
8. The influence factor adjustment was made by the DOR upon notification by Mr. Foster that the property was subject to a restriction imposed by the City of Belgrade: "It shall not be built on until Central Avenue and corresponding infrastructure is installed to City Standards as approved by the City between 9<sup>th</sup> Street and 10<sup>th</sup> Street." (Foster CTAB Ex. 1.) The City

has also approved the lot for the building of a triplex rental property.  
(Testimony, Foster.)

9. The Taxpayer filed an appeal with the Gallatin CTAB on December 16, 2011, citing “value” as the reason for appeal and requesting a land value of \$1,000. (Appeal Form)
10. The Gallatin CTAB heard the appeal on February 22, 2012.
11. Taxpayer testified that there is no access to the property as the lot was created by subdividing an existing lot, with a new four-plex built on the front portion.
12. The City imposed the improvement requirement at the time of the subdivision approval. The Taxpayer received title to the lot “to satisfy a partnership.” (CTAB Testimony, p. 5.)
13. Taxpayer submitted a letter from an engineering firm which estimated that the cost of installing the required street improvements (to provide access to the parcel) would range from \$82,500 to \$88,000. (CTAB Exh. 2.)
14. Taxpayer argued that the land had no real use, because the cost to cure the access issue is so high, and requested a land value of \$1,000. (CTAB Testimony, p. 10.)
15. Rocky Haralson, of the DOR, testified that the subject property had been given a 50 percent influence factor reduction in recognition of the improvement requirements mandated by the City of Belgrade. The 50 percent influence factor is because the DOR determined that the land has “major restrictions” under its valuation guidelines.
16. The DOR argued that the regulations which describe influence factors distinguish between those with major restrictions, which qualify for a 50 percent reduction, and those that are unbuildable, which qualify for a 90 percent reduction in value.

17. Mr. Foster argued that his property should have been accorded a 90 percent reduction as unbuildable. He placed its maximum value at \$1,000.
18. The Gallatin CTAB reduced the DOR's land value to \$17,500, or 50 percent of its adjusted market value, stating: "While this lot is restricted at this time and the owner cannot afford to cure the restriction it could be built upon at some time in the future." (Appeal Form.)
19. The Taxpayer appealed to this Board on March 21, 2012, stating "Value too high." (Appeal Form.)
20. The DOR pointed out that the property is not unbuildable or limited in its use, due to steeply rocky terrain or the presence of toxic waste, for example. The only impediment is the requirement of paving the access street, which was accommodated by the 50% reduction granted during the AB-26 review.

#### **Principles of Law**

1. The State Tax Appeal Board has jurisdiction over this matter. (§15-2-301, MCA.)
2. All taxable property must be assessed at 100% of its market value except as otherwise provided. (§15-8-111, MCA.)
3. The State Tax Appeal Board must give an administrative rule full effect unless the Board finds a rule arbitrary, capricious, or otherwise unlawful. (§15-2-301(4), MCA.)

#### **Board Discussion and Conclusions of Law**

The Board must determine, based on a preponderance of the evidence, whether the DOR set an appropriate valuation for the subject property for tax year 2011.

As a general rule, the appraisal of the Department of Revenue is presumed to be correct and the Taxpayer must overcome this presumption.

The Department of Revenue should, however, bear a certain burden of providing documented evidence to support its assessed values. *Farmers Union Cent. Exch. v. Department of Revenue*, 272 Mont. 471, 901 P.2d 561, 564 (1995); *Western Airlines, Inc., v. Michunovich*, 149 Mont. 347, 353, 428 P. 2d 3, 7, *cert. denied* 389 U.S. 952, 19 L. Ed. 2d 363, 88 S. Ct. 336 (1967).

In this case, the property has been subjected to a requirement by the City of Belgrade that will require a substantial expenditure before the property can be developed, but there is no permanent restriction on the building of an income-producing apartment building on the lot. We note that the lot is in the middle of a developed residential neighborhood, with paved streets leading to and from the one-block section of road that Taxpayer (or other entity) will be required to pave before developing, so we find the evidence shows the lot is certainly not useless or impossible to build upon for any physical or legal reason.

For this property, we are tasked with determining a market value: the price a willing buyer and seller would consider for the property. Neither the Taxpayer nor the DOR presented any market value evidence to this Board in support of the DOR's \$34,947 value or the Taxpayer's \$1,000 value, so their relative claims are difficult to evaluate in comparison to other vacant lots with similar restrictions. The County Tax Appeal Boards, however, have unique knowledge of property and market conditions in their jurisdictions and we note that the Gallatin County Board chose to view the restriction in this case as temporary but substantial. They reduced the value to \$17,500 and no evidence was presented that calls that decision into question. Thus, it is the opinion of this Board that the assessed value set by the Gallatin County Tax Appeal Board be affirmed.

Order

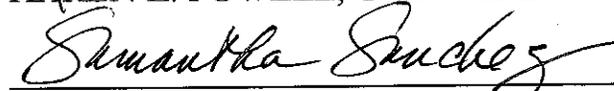
IT IS THEREFORE ORDERED by the State Tax Appeal Board of the State of Montana that the subject land value shall be entered on the tax rolls of Gallatin County at a 2011 tax year value \$17,500 as determined by Gallatin County Tax Appeal Board

Dated this 23<sup>rd</sup> day of August, 2012.

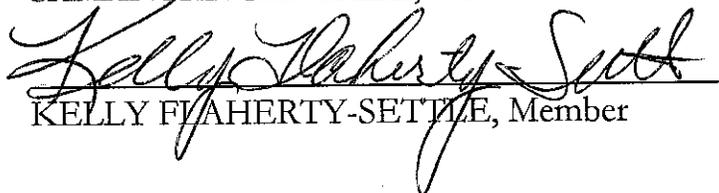
BY ORDER OF THE  
STATE TAX APPEAL BOARD



KAREN E. POWELL, Chairwoman



SAMANTHA SANCHEZ, Member



KELLY F. AHERTY-SETTLE, Member

(SEAL)

**Notice:** You are entitled to judicial review of this Order in accordance with Section 15- 2-303(2), MCA. Judicial review may be obtained by filing a petition in district court within 60 days following the service of this Order.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 23<sup>rd</sup> day of August, 2012, the foregoing Order of the Board was served on the parties hereto by depositing a copy thereof in the U.S. Mails, postage prepaid, addressed to the parties as follows:

Robert S. Foster  
6090 Springhill Road  
Belgrade, Montana 714

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