

BEFORE THE STATE TAX APPEAL BOARD  
OF THE STATE OF MONTANA

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STEPHEN & DIANA GOLDBERG,	)	DOCKET NO.: PT-2009-136
	)	
Appellants,	)	
	)	FACTUAL BACKGROUND,
-vs-	)	CONCLUSIONS OF LAW,
	)	ORDER and OPPORTUNITY
DEPARTMENT OF REVENUE	)	FOR JUDICIAL REVIEW
OF THE STATE OF MONTANA,	)	
	)	
Respondent.	)	

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**Statement of Case**

Diana and Stephen Goldberg, Taxpayers, are the owners of a parcel of property, with improvements, on Andesite Ridge Road, ID# 25-0426-31-1-03-05-0000, Yellowstone Mountain Club, Madison County. They appeal the market value placed on their property by the Department of Revenue (DOR) for 2009. A telephonic hearing was held August 11, 2011. Taxpayers were represented by their attorney, Chris Sweeney. Charlie Callender, senior vice president for marketing and sales at the Yellowstone Club, testified on behalf of the Taxpayers. The DOR was represented by Tax Counsel Amanda Meyers, and DOR appraisers Rocky Haralson, Mark Olson, Elizabeth Vatsaas and Brandy Hilton.

**Issue**

The issue is whether the DOR properly valued the property. This Board enters the following:

## Facts Presented

1. Taxpayers' property was appraised by the DOR for \$15,215,509 for the improvements and \$2,787,942 for the land, for a total value of \$18,003,451 for tax year 2009. Taxpayers filed a timely request for an informal review, stating:

The newly-determined "Market/Productivity Value" as of July 1, 2008, is not reflective of the fair market value, and property taxes assessed on this excessively high new value will be inconsistent with the provisions of Title 15, MCA, and the Administrative Rules promulgated under those statutes.  
DOR Exhibit A, Form AB-26.
2. The DOR reviewed the appraisal and reduced the value of the improvements to \$14,996,345, but did not reduce the land value, for a total of \$17,784,287. DOR Exhibit A, Form AB-26.
3. Taxpayers appealed to the Madison County Tax Appeal Board (CTAB) stating "Final determination by DOR not acceptable to Taxpayer." Taxpayers requested a value of \$2,100,000 for the land and \$10,900,000 for the improvements for a total of \$13,000,000. DOR Exhibit B, Property Tax Appeal Form.
4. The CTAB upheld the DOR value "Because the appellant didn't present sufficient evidence that disputed the Department of Revenue appraisal." DOR Exhibit B, Property Tax Appeal Form.
5. Taxpayers appealed to this Board, stating:

The Board has failed to consider all elements of the market value standard pursuant to Mont. Code Ann. § 15-8-111, including, but not limited to, functional and economic obsolescence. The assessment is not consistent with market value. Appellants request de novo review at the Montana State Tax Appeal Board.  
DOR Exhibit B, Property Tax Appeal Form.
6. Charlie Callender, senior vice president for marketing and sales and a licensed real estate broker, testified the Goldbergs bought the lot in 2002 and built the house by 2007. Testimony Callender.

7. In December 2006, the owners of the Yellowstone Club announced their separation and the challenges caused by the dissolution of the property resulted in a freeze in the market for these properties, even before the general market decline. The decline started late in 2007 and by mid-2008 property sales were flat. Testimony Callender.
8. The Yellowstone Club filed for Chapter 11 bankruptcy in November 2008. When the Club came out the bankruptcy proceedings in July 2009, a thaw started and sales slowly resumed. Testimony Callender.
9. Recent purchases have been mostly condominium sales in the \$3.4 million to \$5 million range. There were no “major” house sales in 2008. Testimony Callender.
10. According to Mr. Callender, the most expensive house sale in 2008 in the Yellowstone Club sold for \$5.5 million. He thought the Taxpayers could not have sold their house at that time for \$18 million or even \$13 million as there was no activity at that level. Testimony Callender.
11. Mr. Callender said that there is about one sale per year of houses over \$10 million in the Yellowstone Club. He further stated the market for a home like the Goldbergs is minimal to non-existent now. There were no homes like the Goldbergs’ on the market. Testimony Callender.
12. Mr. Callender admitted on cross examination that he is not an appraiser and is not familiar with the DOR appraisal rules or methods. Testimony Callender.
13. Mr. Callender admitted on cross examination that he had testified in the CTAB hearing that typically such a home was worth \$950 to \$1,050 per square foot in July 2008. The Goldbergs’ home is 14,000 square feet and the guest house is another 3,000 square feet, which would indicate a value between \$16.15 million and \$17.85 million, higher than the DOR valuation of the buildings without the land. Testimony Callender.

14. DOR Appraiser Elizabeth Vatsaas testified that the Yellowstone Club is a gated community requiring any potential buyers have a minimum of \$3 million in liquid assets. Andesite Ridge is the top of the mountain in the Club and the Goldbergs' home is probably the nicest house on the mountain, with very high quality construction and fixtures, and the only one of that size. Testimony Vatsaas.
15. The subject property was valued using the cost method because there are two houses on the property, making market comparisons difficult. The value was changed after the AB-26 review due to an adjustment made in the size of the basement on the property record card. Testimony Vatsaas.
16. The Yellowstone Club bankruptcy filing occurred after the valuation date, so that did not affect the appraisal. Testimony Vatsaas.
17. Ms. Vatsaas testified that the building is insured for \$29 million and \$51 million with furnishings. Testimony Vatsaas.
18. Mark Olson, DOR area manager, discussed the computer assisted land pricing (CALP) model that was used to value the underlying land. The CALP shows that land prices continued to increase in the Yellowstone Club through the period of the divorce in 2006 and even into 2008. Four of the 14 sales occurred in 2008 and the paired sales analysis showed a rate of increase of 2.5 percent per month. DOR Exhibit G.
19. Rocky Haralson, DOR, discussed the property record card for a sale in October 2009, which was referenced by Mr. Callender in the CTAB hearing and from which he derived his \$950-\$1,050/sq.ft. value. The property sold for \$12 million, more than the \$10.4 million appraised by the DOR. DOR Exhibit I.
20. Ms. Vatsaas testified that there are no properties like the Goldbergs' property but a sale for a similar property for \$17,715,878 took place in the Yellowstone Club in October 2007. The property has larger acreage but a

smaller building of lesser quality. She testified that the property is not directly comparable to the Goldbergs' but it was a sale in a similar price range that occurred less than 10 months before the July 1, 2008 valuation date. Exhibits J1, J2, and J3; Testimony Vatsaas.

### **Principles of Law**

1. The State Tax Appeal Board has jurisdiction over this matter. Section 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. For the taxable years from January 1, 2009 through December 31, 2014, all property classified in class four must be appraised at its market value as of July 1, 2008. Rule 42.18.124 (i)(b), ARM.
4. Market value is the value at which property would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or to sell and both having reasonable knowledge of relevant facts. Section 15-8-111(2)(a), MCA.
5. The Department may use different approaches (for example, market, income, and/or cost approaches), depending on available data, to appraise a property. *Albright v. Montana Department of Revenue*, 281 Mont. 196; 933 P.2d 815 (1997).
6. The appraised value supported by the most defensible valuation information serves as the value for ad valorem tax purposes. Rule 42.18.110(12), ARM.
7. The state tax appeal board must give an administrative rule full effect unless the board finds a rule arbitrary, capricious, or otherwise unlawful. Section 15-2-301(4), MCA.

### **Findings of Fact, Conclusions of Law and Board Discussion**

The question presented in this case is whether the DOR had correctly valued the Taxpayers' property. Taxpayers argue that the property values in the Yellowstone Club had adverse influences even before the general market decline and that there were no sales of the size of the Goldbergs' property when sales went flat after 2006. The DOR, however, presented evidence refuting that claim, showing that land sales continued at prices increasing at 2.5 percent per month, based on a sample that included four sales in 2008. The DOR also presented evidence of a large house which sold in the Goldbergs' price range in late 2007 after the beginning of the general market decline.

Both sides agreed that there are not many houses in this category as the Goldbergs' property is on Andesite Ridge, the top of the mountain, and their two homes are of a quality not matched by other properties on the mountain. Mr. Callender testified he didn't think the subject property could have sold for \$18 million or even \$13 million in 2008. The DOR, however, presented unrefuted evidence of a lesser home that sold for nearly \$18 million in October of 2007, nine months before the appraisal date and well into the supposed freeze on Yellowstone Club sales.

Montana law requires property be appraised at fair market value, here derived by the cost method because of the presence of two houses on the property and lack of comparable properties. The Taxpayers presented no credible appraisal data to show the DOR was incorrect in their methods and the information they presented on the Yellowstone Club market was anecdotal and incomplete. We, therefore, uphold the Madison County Tax Appeal Board and the DOR's valuation of the property.

**Order**

IT IS THEREFORE ORDERED by the State Tax Appeal Board of the State of Montana that the subject property shall be entered on the tax rolls of Madison County by the local Department of Revenue at an improvement value of \$14,996,345 and a land value of \$2,787,942, as determined by the Department of Revenue and affirmed by the Madison County Tax Appeal Board.

Dated this 12th day of September, 2011.

BY ORDER OF THE  
STATE TAX APPEAL BOARD

/s/ \_\_\_\_\_  
KAREN E. POWELL, Chairwoman

( S E A L )

/s/ \_\_\_\_\_  
DOUGLAS A. KAERCHER, Member

/s/ \_\_\_\_\_  
SAMANTHA SANCHEZ, Member

**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 12th day of September, 2011, 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:

VIA U.S. MAIL, POSTAGE  
PREPAID:

John T. Jones  
Brandon J. T. Hoskins  
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VIA INTEROFFICE MAIL:

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/s/ \_\_\_\_\_  
DONNA EUBANK, paralegal