

BEFORE THE STATE TAX APPEAL BOARD
OF THE STATE OF MONTANA

JERRY & BONNIE BILLQUIST,)	
)	DOCKET NO.: PT-1997-6
Appellant,)	
)	
-vs-)	
)	
THE DEPARTMENT OF REVENUE)	FINDINGS OF FACT,
OF THE STATE OF MONTANA,)	CONCLUSIONS OF LAW,
)	ORDER and OPPORTUNITY
Respondent.)	<u>FOR JUDICIAL REVIEW</u>

The above-entitled appeal was heard on March 11, 1999, in the City of Great Falls, in accordance with an order of the State Tax Appeal Board of the State of Montana (the Board). The notice of the hearing was given as required by law.

The taxpayer, Jerry Billquist, presented testimony in support of the appeal. The Department of Revenue (DOR), represented by Pete Fontana, field supervisor, presented testimony in opposition to the appeal. Testimony was presented, exhibits were received, and a schedule for a post hearing submission was established. The Board then took the appeal under advisement; and the Board having fully considered the testimony, exhibits and all things and matters presented to it by all parties, finds and concludes as follows:

FINDINGS OF FACT

1. Due, proper and sufficient notice was given of this matter, the hearing, and of the time and place of the hearing. All parties were afforded opportunity to present evidence, oral and documentary.

2. The property subject of this appeal is described as follows:

Mark 4, Lot 4, less 8.3 acres of right of way. Section 5, Township 20 North, Range 3 East, County of Cascade, State of Montana and improvements located thereon. (Assessor Code - 2405400).

3. For the 1997 tax year, the DOR appraised the subject property at value of \$37,159 for the land and \$126,470 for the improvements.

4. The taxpayer appealed to the Cascade County Tax Appeal Board on September 26, 1997 requesting a reduction in value to \$17,450 for the land and \$69,700 for the improvements, stating:

Property has not increased over the last year. No sales in area to support increase in value.

5. In its October 23, 1997 decision, the county board adjusted the value of the improvements and denied the appeal on the land, stating:

After hearing testimony and reviewing exhibits, the Board grants an additional 30% physical depreciation to the home for a new value of \$45,514.00 with the remaining buildings remaining at the same value for a new total building value of \$106,962.00. The land value remains at \$37,159.

6. The taxpayer then appealed that decision to this

Board on November 8, 1997, stating:

the (sic) value of adjacent property is significantly less than my property for land with similar use. The land values in our area have not changed significantly since an adjacent 18+ acre parcel was valued at \$1,000 per acre by State Tax Appeal Board in July 1996. Improper classification of rural vs commercial was not changed. The value of improvements to my property are greatly overstated by Dept. of Revenue.

7. The values before this Board are the values determined by the Cascade County Tax Appeal Board.

8. The taxpayer resides on the property and also operates a veterinary clinic.

TAXPAYER'S CONTENTIONS

Mr. Billquist stated access to the subject property is gained by a railroad right-of-way; therefore, the subject property is encumbered by a Burlington Northern Railroad private access agreement that must be renewed every four years.

Mr. Billquist testified that his requested value of \$17,450 for the land is what the DOR had established in the previous appraisal cycle.

Mr. Billquist testified that vacant land sales in the immediate area are nonexistent. The DOR's increase to approximately \$2,000 per acre is unwarranted. Mr. Billquist stated that this Board set the value of an adjacent 18.48 acre parcel in 1996 at \$1,000 per acre.

Mr. Billquist testified that neighboring properties are valued less than the subject property. A property located to the

west consists of 174 acres and is valued by the DOR at \$6,945. To the east, a property consisting of 24 acres is valued by the DOR at \$958.

Taxpayers' exhibit #3 consists of information provided to Mr. Billquist from a local realtor. Summarized, this exhibit illustrates the following:

<u>Sale #</u>	<u>Location</u>	<u>Sale Date</u>	<u>Sale Price</u>	<u>Size (acres)</u>	<u>Sale Price Per Acre</u>
1	Sun River	5/15/98	\$29,500	40	\$ 737
2	Sun River	12/22/97	\$17,700	20	\$ 850
3	Vaughn	12/1/97	\$14,000	20	\$ 700
4	Sun River	5/8/98	\$20,000	20	\$1,000

According to Mr. Billquist, these sales are located a greater distance from Great Falls than the subject property.

Mr. Billquist testified that the subject neighborhood is that area which encompasses approximately a two-mile radius of the subject property and is predominately residential with a scattering of commercial.

The residence and garage changed in value from the previous appraisal cycle from \$54,627 to \$80,630 in the current cycle. The residence is a modular structure purchased in 1987 for \$26,000 and is on a permanent foundation. The barn/vet clinic (building #1) was built in 1988 at a cost of \$25,500. The loafing sheds (buildings 2 & 3) were constructed at a cost of \$2,500 each.

The taxpayers' requested values for the various structures are as follows:

<u>Structure</u>	<u>Taxpayer Value</u>
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#1 Pole barn/clinic	\$25,500
#2 Loafing shed	\$ 3,475
#3 Loafing shed	\$ 3,475
#4 Horse pen	\$ 650
#5 Horse pen	\$ 650
#6 Garage/storage	\$ 6,750
#7 Residence	\$27,500
<u>Total</u>	<u>\$68,000</u>

Taxpayers' exhibit #2 is a map illustrating the subject site along with the locations of the various structures. The areas identified as pasture are not a part of the commercial veterinary operation. The total area in commercial usage is less than one acre.

DOR'S CONTENTIONS

DOR's exhibit A illustrates the dimensions of the various structures, exhibit B is the property record card, and exhibit C is a summary of the values. Summarized, these exhibits illustrate the following:

<u>Building</u>	<u>Description</u>	<u>Use</u>	<u>Market Value</u>
#1	Pole barn/clinic	Commercial	\$ 39,592
#2 & #3	Pole frame buildings	Commercial	\$ 6,210
#4 & #5	Pole frame buildings	Commercial	\$ 860
#6	Residence	Residential	\$ 65,020
#7	Garage/storage(prefabricated)	Residential	\$ 13,866
#8	Utility shed	Residential	\$ 920
	Land (10 acres)	Commercial	\$ 21,000
	Land (7.452 acres)	Residential	\$ 16,159
<u>Total market value</u>			<u>\$163,627</u>

The DOR has determined the property to have two primary sites. 7.452 acres are classified as residential and 10 acres as classified as commercial. The same land valuation model was used to determine the land value for both sites. Exhibit D, the

Computer Assisted Land Pricing (CALP) model analyzes 16 land sales and in summary illustrates the following:

Neighborhood 009.	Base size:	10 acres
10 acre tracts.	Base rate:	\$2,084
4 mile radius of Great Falls.	Adjusted Rate:	\$1,917

Mr. Fontana testified the DOR made the determination that 10 acres is attributed to the commercial occupancy and 7.452 acres is attributed to the residential occupancy. Based on the CALP model, the market value indications for the commercial and residential are \$21,000 and \$16,159 respectively, for a total land value of \$37,159.

The following is a summary of the property record card (exhibit B):

Residence (#7)

Year built - 1985	Physical condition - average
Quality grade - fair	Condition/Desirability/Utility (CDU) - average
Living area - 1,344 square feet	
Percent good - 65% (depreciation - 35%)	
Economic Condition Factor (ECF) - 123%	
Market value - \$65,020	

RS1 - pump house (#8)

Year built - 1984	Quality grade - average	Condition - average
Market value - \$920		

AP3 - two pole frame structures (#4 & #5)

Year built - 1984	Quality grade - low	Condition - average
Market value - \$860		

AP3 - two pole frame structures (#2 & #3)

Year built - 1984	Quality grade - low	Condition - average
Market value - \$6,210		

AX1/FX1 - prefabricated building (#6)

Year built - 1984	Quality grade - average	Condition - average
Market value - \$13,856		

AX1 - prefabricated building (#1)

Year built - 1984	Quality grade - good	Condition - average
Market value - \$34,480		

Mr. Fontana stated that the property record card indicates a small area of enclosed porch. It was testified at the county hearing that this enclosed porch does not exist.

Mr. Fontana emphasized that the structures identified on exhibit C have a commercial use but have not been valued as commercial structures.

BOARD'S DISCUSSION

The DOR has determined the subject neighborhood to consist of a four mile radius that surrounds the city of Great Falls. Because the DOR's neighborhood determination is such a large area, the Board asked Mr. Fontana to provide the approximate locations of the land sales used in the CALP model. Mr. Billquist testified there have been no land sales in the immediate area of the subject, which is supported by the DOR's post-hearing submission. The CALP model (exhibit D) and the post-hearing submission illustrate the following with respect to the land sales:

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Sale #	Line #	Section	Sale Date	Sale Price	Size (acres)	Sale Price per Acre
1	14	23	4/92	\$26,703	9.710	\$2,750

2	15	32	2/95	\$12,500	10.000	\$1,250
3	16	35	9/93	\$30,000	10.001	\$3,000
4	17	27	3/93	\$24,000	10.010	\$2,398
5	18	27	7/94	\$30,000	10.010	\$2,997
6	19	28	9/92	\$10,000	10.060	\$ 994
7	20	35	1/94	\$12,500	10.060	\$1,243
8	21	35	1/94	\$12,500	10.080	\$1,240
9	22	27	12/92	\$26,000	12.330	\$2,109
10	23	27	7/94	\$31,000	12.330	\$2,514
11	24	22	4/92	\$43,000	16.882	\$2,547
12	25	35	3/94	\$44,994	20.060	\$2,243
13	26	35	3/94	\$45,017	20.070	\$2,243
14	27	35	1/94	\$25,000	20.135	\$1,242
15	28	31	1/93	\$40,000	20.400	\$1,961
16	29	32	2/95	\$40,000	20.420	\$1,959

There are a number of factors that affect land values, i.e., location, date of sale, size, zoning, etc. The DOR's CALP model recognizes a time adjustment and, in the following table, the sales are arranged in order from the most dated to the most recent sale. This illustration is an attempt to identify a time adjustment.

Sale #	Line #	Section	Sale Date	Sale Price	Size (acres)	Sale Price per Acre
11	24	22	4/92	\$43,000	16.882	\$2,547
1	14	23	4/92	\$26,703	9.710	\$2,750
6	19	28	9/92	\$10,000	10.060	\$ 994
9	22	27	12/92	\$26,000	12.330	\$2,109
15	28	31	1/93	\$40,000	20.400	\$1,961
4	17	27	3/93	\$24,000	10.010	\$2,398
3	16	35	9/93	\$30,000	10.001	\$3,000
7	20	35	1/94	\$12,500	10.060	\$1,243
8	21	35	1/94	\$12,500	10.080	\$1,240
14	27	35	1/94	\$25,000	20.135	\$1,242
12	25	35	3/94	\$44,994	20.060	\$2,243
13	26	35	3/94	\$45,017	20.070	\$2,243
5	18	27	7/94	\$30,000	10.010	\$2,997
10	23	27	7/94	\$31,000	12.330	\$2,514
2	15	32	2/95	\$12,500	10.000	\$1,250
16	29	32	2/95	\$40,000	20.420	\$1,959

It is the Board's opinion that there is no clear indication that an adjustment for time is warranted based on the aforementioned sales.

It is the Board's opinion that the land sales presented

by the taxpayer are not considered comparable to the subject property due to their location.

ARM. 42.18.109 Residential Reappraisal Plan (6) Residential lots and tracts are valued through the use of computer assisted land pricing (CALP) models. Homogeneous areas within each county are geographically defined as neighborhoods. The CALP models will reflect January 1, 1996, land market values. (emphasis added)

ARM. 42.18.112 Commercial Reappraisal Plan (6) Commercial lots and tracts are valued through the use of computer assisted land pricing (CALP) models. Homogeneous areas within each county are geographically defined as neighborhoods. The CALP models will reflect January 1, 1996, land market values. (emphasis added)

Mr. Fontana stated that "Neighborhood 009 is an area that encompasses the entire city of Great Falls. The Board notes that the neighborhood appears excessively large in size, but the taxpayer failed to present supporting evidence, i.e., comparable land sales to illustrate something to the contrary.

Mr. Fontana testified that no zoning restrictions are present in this neighborhood. The Board is puzzled as to how the DOR can apportion an area of land as commercial or residential based on the use or occupancy. Mr. Fontana testified that no difference in land value exists in this neighborhood between commercial and residential. In addition, nothing was presented with respect to the use of the DOR's land sales. If the taxpayer only occupied the property with his business operation, the overall land value would be less. The same would be true if the taxpayer only resided on the property. With no zoning restrictions placed on the land, the potential uses can be expressed as somewhat

unrestricted.

ARM. 42.20.104 Comparable Property (3) Within the definition of comparable property in (1), the following types of property are considered comparable:

(f) Residential tract land is comparable to other residential tract land.

(g) Commercial tract land is comparable to other commercial tract land.

There is nothing in the record to justify the DOR conclusion that, because the taxpayer resides and conducts business on the property, a difference in land value exists. It is the Board's finding that the subject parcel be valued based on the DOR's CALP model for neighborhood 009 as a 17.452 acre tract of land. Based on the evidence and testimony, the value for the land is:

10.0	acres	@ \$2,100 per acre =	\$21,000
7.452	acres	@ \$1,900 per acre =	\$14,159
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17.452	acres		\$35,159

One of the taxpayers' concerns is that property within the immediate area is being valued less than the subject property, which creates an inequity in DOR land values. The properties, however, are in a different classification. The Board rejects the taxpayer's arguments in favor of reduced valuation based upon assessed values of neighboring properties. Based on the testimony, these properties are agricultural.

15-8-111 Assessment - market value standard - exceptions. (1) All taxable property must be assessed at 100% of its market value except as otherwise provided.

(6) (c) Properties in 15-6-133, under class three, are assessed at 100% of the productive capacity of the lands when valued for agricultural purposes. All lands that meet the qualifications of

15-7-202 are valued as agricultural lands for tax purposes.

The taxpayer made reference to this Board's decision in *PT-1995-3, DOR v. Jerry and Bonnie Billquist*, in which this Board set the land value of the property at \$1,000 per acre. The sales information that the Board relied upon to make its determination came from information within that appraisal cycle. The sale data that the DOR used to establish land values for the current appraisal cycle are contained on exhibit D.

The Cascade County Tax Appeal Board applied an additional 30% depreciation to the residence, which adequately addressed this Board's concern with the application of an economic condition factor of 123%. In addition, it was testified that a small area of "enclosed porch" does not exist. Based on the evidence and testimony, the values as determined by the DOR for the remaining structures represent market value.

15-8-111 MCA. Assessment -- market value standard -- exceptions. (1) All taxable property must be assessed at 100% of its market value except as otherwise provided.

(b) If the department uses construction cost as one approximation of market value, the department shall fully consider reduction in value caused by depreciation, whether through physical depreciation, functional obsolescence, or economic obsolescence.

It is true, as a general rule, that the appraisal of the Department of Revenue is presumed to be correct and that 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. (Western Airlines, Inc.,

v. Catherine Michunovich et al., 149 Mont. 347, 428 P.2d 3,(1967).

CONCLUSIONS OF LAW

1. The State Tax Appeal Board has jurisdiction over this matter. **§15-2-301 MCA.**

2. **§15-8-111, MCA. Assessment - market value standard - exceptions.** (1) All taxable property must be assessed at 100% of its market value except as otherwise provided.

3. **15-2-301, MCA, Appeal of county tax appeal board decisions.** (4) In connection with any appeal under this section, the state board is not bound by common law and statutory rules of evidence or rules of discovery and may affirm, reverse, or modify any decision.

4. The appeal of the taxpayer is hereby granted in part and denied in part and the decision of the Cascade County Tax Appeal Board is modified.

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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 Cascade County by the Assessor of that county at the 1997 tax year values of \$35,159 for the land. The Cascade County Tax Appeal Board's value determination for the residence shall be reduced in value with the removal of the area identified on the property record card as "enclosed porch". The remaining structures shall be valued as determined by the Department of Revenue. The appeal of the taxpayer is therefore granted in part and denied in part and the decision of the Cascade County Tax Appeal Board is modified.

Dated this 30th of March, 1999.

BY ORDER OF THE
STATE TAX APPEAL BOARD

GREGORY A. THORNQUIST, Chairman

(S E A L)

JAN BROWN, Member

JEREANN NELSON, 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 30th day of

March, 1999, 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:

Jerry & Bonnie Billquist
P.O. Box 1207
Great Falls, Montana 59403

Office of Legal Affairs
Department of Revenue
Mitchell Building
Helena, Montana 59620

Appraisal Office
Cascade County
300 Central Avenue
Suite 520
Great Falls, Montana 59401

Nick Lazanas
Cascade County Tax Appeal Board
Courthouse Annex
Great Falls, Montana 59401

DONNA EUBANK
Paralegal