

BEFORE THE STATE TAX APPEAL BOARD
OF THE STATE OF MONTANA

Dennis L. & Jane A. Garnett,)	
)	
Appellant,)	DOCKET NO.: PT-2004-10
)	
THE DEPARTMENT OF REVENUE)	FACTUAL BACKGROUND,
OF THE STATE OF MONTANA,)	CONCLUSIONS OF LAW,
)	ORDER and OPPORTUNITY
Respondent.)	FOR JUDICIAL REVIEW

The above-entitled appeal was heard on May 26, 2005, in Billings, Montana, in accordance with an order of the State Tax Appeal Board of the State of Montana (Board). The notice of the hearing was duly given as required by law. Dennis L. Garnett (Taxpayer) represented the taxpayers and presented evidence and testimony in support of the appeal. Appraisers Robin Rude and Genia Mollett represented the Department of Revenue (DOR) and presented evidence and testimony in opposition to the appeal.

The duty of this Board is to determine the appropriate market value for the property based on a preponderance of the evidence. Testimony was taken from both the Taxpayer and the Department of Revenue, and exhibits from both parties were received. The Board allowed the record to remain open for a period of time for the purpose of receiving post-hearing submissions.

The Board modifies the decision of the Yellowstone County Tax Appeal Board.

FACTUAL BACKGROUND

1. Due, proper, and sufficient notice was given of this matter, the hearing hereon, and of the time and place of the hearing. All parties were afforded opportunity to present evidence, oral and documentary.
2. The subject property is residential in character and described as follows:

Lot 11, Block 2 of the Gregory Hills Subdivision, Fourth Filing, and the improvements thereon, at 2800 Gregory Drive South, City of Billings, County of Yellowstone, State of Montana (Geocode #03-1032-26-3-02-01-0000, Assessor Code A196810)

3. The original values on the subject property for tax year 2004 totaled \$349,800 (\$82,110 for the land and \$267,690 for the improvements).
4. For 2004, the Taxpayer filed an AB-26 property review form, and the Department adjusted the subject property's valuation, stating:

**Influence was placed on land for its location within the subdivision. Adjustment made to improvement for location as well.
Final value: \$314,200 : Land = 53,372
Imp: 260828**

Thus, the DOR's adjusted assessment is \$53,372 for the land and \$260,828 for the improvements.

5. The Taxpayer appealed the Department's adjusted values to the Yellowstone County Tax Appeal Board (County Board), requesting values of \$50,000 for land and \$220,000 for improvements and stating in summary:

Values set by the Dept of Revenue do not accurately reflect property devaluation because property is located adjacent to busy state highway.

6. On January 11, 2005, the County Board disapproved the requested values for the following reasons:

Based on the evidence in [sic] testimony presented, the Board found the taxpayer failed to present sufficient evidence to support the position that the Department of Revenue's appraisal on this property is erroneous & therefore, failed to sustain the burden on appeal.

7. The Taxpayer appealed that decision to this Board on February 2, 2005, stating:

The D of Revenue personnel sent me 5 comparable properties generated by the computer. When I met w/ the Board & discredit the use of the 5 properties as NON-comparables, she presented 5 select prop. in the neighborhood - But I have 15 comparables. It was arbitrary & inaccurate

TAXPAYER'S CONTENTIONS

The Taxpayer stressed the undesirable location of the subject property. It has streets on three sides, one of which (Rimrock Road) is a state highway that carries 9000 cars per day. The Taxpayer also emphasized that the

Gregory Hills Subdivision, once the premier subdivision in Billings, is now 40 years old. Many of the properties, including the subject, have not been remodeled or up-dated and are not holding their value. According to the Taxpayer, people who can afford a home like those in Gregory Hills can go to one of the newer subdivisions in the area and find the same size and quality home but with modern architecture and new construction. (Taxpayer's Testimony and Exhibit 2).

To calculate the value of the subject land, the Taxpayer compared the assessed value of the subject to the assessed value of a lot at 2909 Gregory Drive. (Taxpayer's Exhibit 3). The comparison lot measures 21,600 square feet and is bordered on two sides by streets, one of them being Rimrock Road. The comparison lot is assessed at \$3.05 per square foot. The subject property is 13,200 square feet, bordered on three sides by streets and assessed at \$4.04 per square foot. The Taxpayer requested that the assessed value of the subject lot be reduced to \$3.05 per square foot for a total value of \$40,260.

The DOR has valued the subject property using the sales comparison approach. The Taxpayer disputed the comparability of some of the properties used by the DOR in setting the subject's value. (Taxpayer's Exhibit 4) The

Taxpayer noted that Comparable #3 is brand new construction in a brand new subdivision, while the subject property is a 20-year old home in a 40-year old subdivision. Comparable #4 is a cottage-style home while the subject is a conventional style home. The homes also differ in square footage. The Taxpayer dropped both these comparables from consideration. A third comparable (#5) was not addressed.

The Taxpayer accepted Comparables #1 and #2 for comparison purposes but pointed out that Comparable #1 is in a location with **no** traffic and Comparable #2 is located against the rims, a highly desirable, prestigious location in Billings, with a great view and no traffic. The Taxpayer established a total value of \$246,600 for the subject property by dividing the sales prices of these two comparables by the total finished square footage of both properties to calculate a per square foot value, then multiplied that value by the total finished square footage of the subject property. From the total \$246,600 value, the Taxpayer subtracted \$40,000 for the subject lot, thus establishing a value for the improvements of \$210,000, which is the value the Taxpayer is requesting.

The Taxpayer provided a plat of the Gregory Hills Subdivision with a list of property sales in the subdivision from 1999 through September 30, 2003 and a

spreadsheet of information on each house. (Taxpayer's Exhibit 6). Adding together the sales prices and the finished square footage of all these properties, then dividing square footage into price produces a value of \$63 per finished square foot. The Taxpayer maintained that the value of the subject property should be \$63 to \$65 per finished square foot.

DOR CONTENTIONS

Initially, the subject property was valued at \$349,800, \$82,1110 for the land and \$267,690 for the improvements. Through the AB-26 informal review process, the Department did an external review of the subject, focusing primarily on the property's location. Originally, the Condition-Desirability-Usefulness (CDU) rating for the property was Very Good, a 9 in the CDU scale. Based on the AB-26 review, the CDU was lowered to Good (7.75 in the scale) because of the subject's location. (Testimony of Appraiser Rude).

DOR further evaluated the assessment of the land by reviewing all of the land sales used to set land values in the Gregory Hills Subdivision. (DOR Exhibit B - CALP Model). The sales of two large lots, one fronting Rimrock Road (Sale #8) and one next to the rims (Sale #9), were used to evaluate the influence that Rimrock Road might have

on the value of a lot. According to DOR methods, the time-adjusted price per unit difference between those two sales was 62.2%. DOR rounded that to a 65% influence and applied that influence factor to all the Gregory Hills lots along Rimrock Road. As a result, the subject's land value was reduced to \$53,372 or \$4.04 per square foot. (Testimony of Appraiser Rude).

DOR's Exhibit C provides information on the sales used to set the value of the subject through the sales comparison method, along with a map of their locations. DOR explained that comparable properties are selected by a computer program, which uses weighted variables set by specialists in DOR's central office. DOR's Exhibit D shows the variables and the weight given each variable for each of the properties selected as comparable to the subject. After the computer program calculates the comparability of all sales in the database, the five sales that have the lowest comparability points are selected to use in setting the value of the subject. The comparability points for the properties selected in valuing the subject ranged from 61 to 124.

DOR also reviewed all sales within the Gregory Hills Subdivision for 2000 and 2001 and ran them through the computer using the same weighting program. The

comparability points for these sales ranged from 135 points to 686 points. Consequently, none of the sales in the Gregory Hills Subdivision were used as comparable properties for the subject. (Testimony of Appraiser Rude)

The sales comparison approach established a market value for the subject of \$314,200. The value derived for the subject through the cost approach was \$315,282. As set out in Albright v. Montana Department of Revenue, 281 Mont. 196, 933 P.2d 815, the Department appraiser must choose between the two values based on the amount and reliability of the data and the accuracy of each approach. In this case, the DOR chose to use the market-based value of \$314,200.

The DOR noted that, through the review process, the overall value of the subject was reduced from \$349,800 to \$314,200, due to the location of this particular lot.

POST-HEARING REQUEST

After the hearing, the Board requested from DOR the property record cards and photos, if available, for thirteen of the sales listed in Taxpayer's Exhibit 6, those being the sales that occurred from 2000 through 2003. DOR provided the information to the Board and to the Taxpayer. This packet of information was entered as Board Exhibit 1.

BOARD DISCUSSION

The DOR used a CALP Model to set land values in the Gregory Hills Subdivision. (DOR Exhibit B). This Model includes a paired sale, that is, the same lot was sold twice within the time period covered by the Model. This paired sale indicates that the market for lots in Gregory Hills was appreciating by 0.4545% per month.

Two other sales in the CALP Model were used by the DOR to determine the influence exerted by Rimrock Road on the market value of the lots in Gregory Hills. Applying the appreciation factor from the paired sale (0.4545% per month) to trend the sales price of the lot influenced by Rimrock Road to the January 2002 assessment date, the market value of that sale on January 1, 2002, would have been \$2.89 per square foot.

Multiplying this market value by the lot size of the subject property yields a value of \$38,148. The Board recognizes that the Department values larger lots at less per square foot than smaller lots. The lot with an assessment date value of \$2.89 per square foot is larger than the subject lot. Accordingly, the Board finds it reasonable to adopt the Taxpayer's request for a land value of \$3.05 per square foot for a total value of \$40,260 on the subject land, rather than a value of \$2.89 per square foot for the subject land.

The preponderance of evidence on the value of the subject improvements, however, supports the value set by the DOR. The Board notes that the Taxpayer questioned the comparability of some of the properties used as comparisons by the DOR. Similarly, the Taxpayer questioned the accuracy of the computer program used by the Department.

In the sales comparison approach, appraisal principles and practice require that the appraiser select comparison properties which match features of the subject property as closely as possible. Where the comparison property differs from the subject property, the value of the comparison property must be adjusted to make the comparison property look like the subject. This is the methodology used not only in the DOR's mass appraisal system but also by private appraisers doing fee appraisals.

The DOR demonstrated what property features the computer system used for comparison, the weight attached to each feature, and the method used to adjust the price of the comparison property to make it look like the subject property. There is no evidence in the record to demonstrate that the DOR approach or the computer program used is unreliable or invalid.

The Board agrees with the Taxpayer that there are location factors which affect the value of the subject

property and which were not reflected in the assessment initially set by the Department. These unique location factors of the subject property have been addressed through the informal review process and this Board hearing.

The Board also carefully reviewed the property record cards, sales information, and comparability of the property sales in Gregory Hills. (Taxpayer's Exhibit 6 and Board Exhibit 1). We do not find in this material evidence of a disparity in the valuation of the subject property. However, this information may support the Taxpayer's contention that the improvements in Gregory Hills are not holding their value. Board Exhibit A includes information on thirteen properties in Gregory Hills. As shown in the table below, the DOR has valued nine of these properties higher than the sales prices for the same properties.

Parcel ID	03-1032-26-3-	03-1032-26-3-	03-1032-26-3-	03-1032-26-3-
	07-08-0000	03-08-0000	05-13-0000	04-13-0000
Address	3275 Gregory Dr W	2819 Gregory Dr S	3215 E MacDonald	2919 Gregory Dr
DOR Value	343,900	282,700	269,300	232,200
Sale Price	330,000	350,000	278,000	190,000
Sale Date	6/30/2000	8/2/2000	12/15/2000	5/25/2001

Parcel ID	03-1032-26-3-	03-1032-26-3-	03-1032-26-3-	03-1032-26-3-
	10-02-0000	03-30-0000	07-06-0000	04-12-0000
Address	3230 Gregory Dr W	2754 Palm Dr	2940 Gregory Dr N	2925 Gregory Dr
DOR Value	429,200	357,100	703,819	307,400
Sale Price	325,000	330,000	850,000	295,000
Sale Date	10/18/2001	6/14/2002	6/14/2002	7/12/2002

Parcel ID	03-1032-26-3-	03-1032-26-3-	03-1032-26-3-	03-1032-26-3-
	06-04-0000	07-25-0000	09-04-0000	03-12-0000
Address	2925 E MacDonald	3103 Sycamore Ln	3125 Sequoia Ln	2751 Gregory Dr S
DOR Value	146,400	288,100	241,200	322,300
Sale Price	147,650	265,000	210,000	285,000
Sale Date	11/4/2002	6/30/2003	7/25/2003	8/28/2003

Parcel ID	03-1032-26-3-
	01-02-0000
Address	2964 Gregory Dr S
DOR Value	415,300
Sale Price	385,000
Sale Date	9/3/2003

It seems unlikely that the time difference between the sales dates and the January 2002 assessment date can adequately account for this pattern of overvaluation by the DOR. In addition, as stated in Appraising Residential Properties, Second Edition, by the Appraisal Institute:

The market conditions adjustment is sometimes referred to as a *time* adjustment. It should be emphasized, however, that it is not time which necessitates this adjustment, but shifts in the market. If considerable time has elapsed, but market conditions have not changed, no adjustment is required. (Page 383)

It appears to the Board that market conditions may have changed for the properties in the Gregory Hills Subdivision and that the rate of appreciation for these properties may have slowed. The Board encourages the Department to undertake a market analysis of the properties

in this Subdivision before the next reappraisal is implemented to determine if, on the whole, these properties are being overvalued and to adjust the assessments to more closely reflect actual market conditions.

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. Western Airlines, Inc., v. Catherine Michunovich et. al., 149 Mont. 347, 428 P.2d 3,(1967).
4. Albright v. Montana Department of Revenue, 281 Mont. 196, 933 P.2d 815 (1997)
5. The appeal of the Taxpayer is granted in part and denied in part and the decision of the Yellowstone 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 Yellowstone County by the local Department of Revenue office at the value of \$40,260 for the land and \$260,828 for the improvements. The decision of the Yellowstone County Tax Appeal Board is modified.

Dated this 22nd day of July, 2005.

BY ORDER OF THE
STATE TAX APPEAL BOARD

(S E A L)

GREGORY A. THORNQUIST, Chairman

JOE R. ROBERTS, Member

SUE BARTLETT, 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 22nd day of July, 2005, 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:

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