

BEFORE THE STATE TAX APPEAL BOARD  
OF THE STATE OF MONTANA

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THE DEPARTMENT OF REVENUE	)	
OF THE STATE OF MONTANA	)	
	)	DOCKET NO.: PT-2003-54
Appellant,	)	
	)	
-vs-	)	
	)	
J. JEFF & HELEN GONSOWSKI	)	FACTUAL BACKGROUND,
	)	CONCLUSIONS OF LAW,
	)	ORDER and OPPORTUNITY
	)	<u>FOR JUDICIAL REVIEW</u>
Respondent.	)	

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The above-entitled appeal was heard on July 26, 2004 in the City of Helena, 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 Appellant, Department of Revenue (DOR), initiated this appeal from a decision of the Lewis and Clark County Tax Appeal Board. At the hearing, the Department of Revenue was represented by Tracie Grimm, appraiser, and Rocky Haralson, Area Manager. Respondents, Jeff and Helen Gonsowski, appeared on their own behalf. Testimony was presented and exhibits were received from both parties. 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 the parties, finds and concludes that the value of taxpayers' land is \$21,419.

**STATEMENT OF THE ISSUE**

The taxpayers dispute a 300 percent increase in land value from the last appraisal cycle on a small, heavily-sloping lot, which is mostly unbuildable, served by a gravel road, and having no community amenities. The taxpayers feel they have been unfairly compared with a neighboring new and large subdivision.

**FACTUAL BACKGROUND**

1. The taxpayers are the owners of the subject land which is legally described as follows:

**Lot 6, Hegland Tracts No. 1, comprised of .64 acres, located in Section 2, Township 10 North, Range 1 West, with a street address of 3930 Lake Hills Lane, County of Lewis and Clark, State of Montana (Assessor ID: 0000013661).**

2. The fully phased-in value for their land in 2002 was \$15,528. Their new land assessment for 2003 was \$62,341.
3. The taxpayers filed an AB26 form for property review with the DOR on August 12, 2003 (DOR Exhibit F). In response, Ms. Grimm conducted an external review of the cabin. As a result of this review, Ms. Grimm applied an influence factor of 69 percent (a 31 percent reduction in land value) due to the topography of the lot. The new value from DOR was \$43,015.
4. A second AB26 form was filed by the taxpayers on September 16, 2003, protesting the increase in the subject lot's appraised value, which still amounted to a 150% increase

even after the prior adjustment. The DOR did not make any further adjustments.

5. The taxpayers appealed that decision to the Lewis and Clark County Tax Appeal Board on September 28, 2003 requesting a land value of \$20,000. The DOR improvement value was not disputed.

6. In its December 12, 2003 decision, the county board approved the appeal, stating:

**Taxpayer's evidence more accurately reflects true value of property.**

7. The DOR then appealed that decision to this Board on January 9, 2004, stating:

**The nature of the proof adduced at the hearing was insufficient, from a factual and legal standpoint, to support the Board's decision.**

#### DOR CONTENTIONS

For the DOR, Ms. Grimm stated that the subject land is contained within a very large neighborhood designation. Most of this neighborhood contains various lakes, including Hauser and Canyon Ferry. Several influence factors have been applied to land in this neighborhood to recognize special characteristics, such as flood plain designation, lake frontage, view, limited access, size and topography, of the individual parcels. These influence factors are established through an analysis of vacant, or abstracted, land sales within the same neighbor. These sales are shown in DOR Exhibit B, a document entitled Lake County Estates Sub Influence

Factor.

For the subject neighborhood, the first acre of land is valued at \$64,000. Residual acreage is valued at \$4,700 per acre. Ms. Grimm presented a map (DOR Exhibit A) showing several parcels of land receiving influence factors in the subject neighborhood. An influence factor was applied to the subject land of 69 percent (a 31 percent reduction to the base value.) Ms. Grimm stated that current sales indicate that a lesser reduction, or influence factor, of 76 percent (24 percent reduction) would be appropriate. According to Ms. Grimm, this would indicate that land values are increasing in the subject neighborhood.

DOR Exhibit E also contains information concerning the sales used to value the subject property. The location of these sales are shown on Exhibit B, the map of the area surrounding the subject property.

To address the taxpayers' contention that the subject lot is not served by community amenities and has a gravel road, Ms. Grimm stated that the comparable sale properties were influenced in the same manner. Therefore, the DOR did not recognize these factors in its appraisal.

DOR Exhibit C is a series of photographs of the subject property showing the gravel lane leading to the lot and the lake views and timbered land enjoyed by the taxpayers.

DOR Exhibit D is a document entitled "Land Sales Comparison", presented to show that comparable properties were valued in a similar manner to the subject.

The DOR offered to reduce the subject assessment to \$34,900

prior to the hearing before this Board. This was the valuation of a property described as Canyon Ferry Crossing Lot #12, as determined by the Lewis and Clark County Tax Appeal Board. It was the DOR's opinion that Lot 12, with a ravine running through it, had about the same buildable area as the subject. The taxpayers refused that offer because the Canyon Ferry Crossing property is 2.6 acres, or four times larger than the subject lot.

#### **TAXPAYERS' CONTENTIONS**

The sales used by the DOR in valuing the subject lot are in Canyon Ferry Crossing, not Hegland Tracts. Hegland Tracts is an older subdivision with gravel roads and above ground utilities. All Hegland Tracts lots are less than an acre in size. Canyon Ferry Crossing, a more recent subdivision, was developed with paved roads, underground utilities, an architectural review committee to review the housing, association dues, road maintenance, street lights, conservation easements, private access into Helena National Forest, traffic signs, and underground tanks for fire suppression. In addition, all of the lots in Canyon Ferry Crossing are larger than one acre.

In 2002, the subject lot was appraised at \$15,528. In July of 2003, the taxpayers received the new appraisal of \$62,341. The taxpayers received a reduction to \$43,015 pursuant to the filing of an AB26 form for property review.

Taxpayers' Exhibit 2 is three listings from Multiple Listing Service, a realtor's association publication. These vacant lots

have "for sale" signs on them and are in close proximity to the subject:

**Lot 4A, 2.75 acres, originally listed for \$60,000, lowered to \$54,900, or approximately \$20,000 per acre.**

**Lot 5A, 3.69 acres, listed for \$61,000, or approximately \$16,000 per acre.**

**Lot 40, 1.69 acres, listed for \$49,000, or approximately \$30,000 an acre.**

Taxpayers' Exhibit 3 is a map showing that the above three lots lie north and south of the subject property and in reasonable proximity. Taxpayers' Exhibit 4 is a copy of an advertisement from the August 24, 2003 *Helena Independent Record*, showing examples of properties in Canyon Ferry Crossing whose sales prices have been dramatically reduced from the original; in most cases, by about 50 percent. This was presented to show that, even at a 50 percent reduction, these lots are being offered for between \$14,000 to \$21,000 an acre.

The subject lot is .647 acres, or 28,235 square feet. The taxpayers have a building that is 768 square feet in size, leaving about 27,500 square feet of land. Of that, there is not enough room to build a garage because of the sloping ground. Taxpayers' Exhibit 5 is a series of photographs depicting the sloping nature of the lot. Mr. Gonsowski stated that he had to physically alter a portion of the property in order to have a piece of ground level enough to put a well in.

Using the listing prices of the properties discussed above, the taxpayers arrived at a suggested value of \$20,000-\$30,000 per

acre for their lot. Using the high end of that range, the taxpayers multiplied \$30,000 per acre times approximately two-thirds of an acre, to arrive at their requested value of \$20,000.

#### **BOARD DISCUSSION**

In State's Exhibit E, the DOR examined 28 sales of vacant land that took place in a newly-developed subdivision known as Canyon Ferry Crossing. The analysis presented in Exhibit E shows that the actual sales data does not support the use of the "base rate" in the area of \$64,000 per acre, and calls for a 25% reduction to all real property in the area, including taxpayers'. This, however, does not address the significant differences that exist between taxpayers' property and that of the subdivision where the above sales took place. As the taxpayers have pointed out, the developed subdivision is substantially different than their unimproved recreational property. Canyon Ferry Crossing has paved roads, underground utilities in place, conservation easements, an architectural review process, and covenants to protect the value of the investment. Exhibit E was offered by the DOR in acknowledgement of the substantial difference between the properties, but the board does not feel that the adjustment made to taxpayers' property through the use of this "influence factor" is sufficient. It still results in over a 150% increase to taxpayers' property from one 6-year cycle to the next.

As a result of an AB-26 review requested by the taxpayers, DOR analyzed four sales of property that were fairly similar in size

but were not a part of the developed subdivision of Canyon Ferry Crossing. (DOR's Exhibit B). Three of the sale properties are in a less-developed subdivision known as Lake Country Estates. It appears that data from these sales are more relevant to establishing an equitable value for taxpayers' land. The summary results of these land sales are presented in this table:

Sale #	Sale Date	Sale Price	Lot Size (Acres)	Price Per Acre	Lot Size (SF)	Price Per SF
1	Oct-01	\$47,500	1.391	\$34,148	60,592	\$0.78
2	Oct-01	\$42,000	1.227	\$34,230	53,448	\$0.79
3	Oct-01	\$38,000	1.266	\$30,016	55,147	\$0.69
4	Oct-01	\$47,500	1.391	\$34,148	60,592	\$0.78
Average			1.319	\$33,135	57,445	\$0.76

The Board finds that these results are much stronger indications of the true value of taxpayers' property than the DOR's previous attempt in Exhibit E of using a "base rate" of \$64,000 per acre, and reducing it through the use of an "influence adjustment". Such an approach may work in other circumstances, but it does not appear to work very well in this instance.

Applying the values derived from the sales data in Exhibit B to taxpayers' property, the following calculation is made: taxpayers' property is .647 of an acre in size for a size in square feet of 28,183. Using the average "price per square foot" value of \$0.76 per square foot, as derived from the table above, results in a total land value of \$21,419.

Validation for this amount can be found by referring to the prior cycle land value of \$15,528. Exhibit B indicates that the

"monthly rate of change" is 0.60%, for an annual rate of change of 7% (rounded). This annual rate of change for the six years of the cycle would constitute an increase of 42%. A 42% increase from one cycle to the next would indicate a value of \$22,049, not a substantial difference from the previously derived value.

For the foregoing reasons, the Board finds that the land value of taxpayers' property is \$21,419.

#### **CONCLUSIONS OF LAW**

1. ***§15-2-301, MCA***, The State Tax Appeal Board has jurisdiction over this matter.
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. ***§15-2-301 MCA***, Appeal of county tax appeal board decisions,  
(4)...*The state tax appeal board shall give an administrative rule full effect unless the board finds a rule arbitrary, capricious, or otherwise unlawful.*

#### **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 Lewis and Clark County by the local Department of Revenue office at a 2003 tax year value of \$21,419.

Dated this 25th day of August, 2004.

BY ORDER OF THE  
STATE TAX APPEAL BOARD

\_\_\_\_\_  
GREGORY A. THORNQUIST, Chairman

\_\_\_\_\_  
JERE ANN NELSON, Member

\_\_\_\_\_  
JOE R. ROBERTS, 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 \_\_\_\_ day of August 2004, 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:

Jeff and Helen Gonsowski  
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Helena, Montana 59624-1722

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Chairman  
Lewis and Clark County Tax Appeal Board  
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DONNA EUBANK  
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