



the first party to perfect its appeal is listed as the appellant in the proceedings. Hence the Taxpayer is the appellant herein even though the DOR is also appealing the decision.

The duty of this Board is to determine the appropriate market value for the property based on a preponderance of the evidence. By statute (15-2-301, MCA) this Board may affirm, reverse or modify any decision rendered by the county tax appeal board. Testimony was taken from both the Taxpayer and the Department of Revenue, and exhibits from both parties were received.

The Board finds that the decision of the Butte/Silver Bow County Tax Appeal Board (CTAB) granting the Taxpayer a 25% reduction in values is not supported in the evidence. The Board finds that the original values determined by the DOR, as adjusted in the AB-26 process, are valid and supported by market evidence. They are legally sufficient to support the values which DOR established on the subject property.

#### **FACTUAL BACKGROUND**

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 subject property is a Planned Unit Development known as "The Links at Country Club" consisting of 22 residential lots located on 5 and ½ acres of property within the city of Butte on Elizabeth Warren Avenue and in the vicinity of the Butte Country Club.
3. Taxpayer is both the owner of the real property and the developer of the improvements on the property. "The Links" development consists of 22 lots ranging in size from 7000 to 8000 square feet. At the time of the hearing taxpayer had sold 10 "packages"; with each "package" consisting of the real property and a choice of one of three pre-designed homes. He also continues to be the owner of record of the roadways and common areas, although those areas will transfer to the property owners at some future point in the build-out.
4. The properties at issue in the appeal are as follows:

**BUILDING SITES UNDER APPEAL (The Links at Country Club)**

INDEX	GEO. CODE	VALUATION DATE	LOT SIZE	DOR CURRENT VALUE	PER UNIT VALUE (SQ.FEET)
Lot 1	01-1198-33-2-09-41-0000	1/1/2002	7804	\$19,208	\$2.46
Lot 2	01-1198-33-2-09-39-0000	1/1/2002	6878	\$17,356	\$2.52
Lot 4	01-1198-33-2-09-35-0000	1/1/2002	7153	\$17,906	\$2.50
Lot 5	01-1198-33-2-09-33-0000	1/1/2002	7437	\$18,474	\$2.48
Lot 6	01-1198-33-2-09-23-0000	1/1/2002	7443	\$18,486	\$2.48
Lot 7	01-1198-33-2-09-21-0000	1/1/2002	7531	\$18,662	\$2.48
Lot 12	01-1198-33-2-09-03-0000	1/1/2002	7267	\$18,134	\$2.50
Lot 13	01-1198-33-2-09-11-0000	1/1/2002	6212	16,024	\$2.58
Lot 14	01-1198-33-2-09-15-0000	1/1/2002	7346	\$18,292	\$2.49
Lot 15	01-1198-33-2-09-13-0000	1/1/2002	8094	\$19,788	\$2.44
Lot 16	01-1198-33-2-09-27-0000	1/1/2002	7694	\$18,988	\$2.47
Lot 17	01-1198-33-2-09-25-0000	1/1/2002	7335	\$18,270	\$2.49
Lot 19	01-1198-33-2-09-29-0000	1/1/2002	7337	\$18,274	\$2.49
Lot 20	01-1198-33-2-09-47-0000	1/1/2002	7068	\$17,736	\$2.51

**COMMON AREAS AND ROADWAYS (The Links at Country Club)**

A	01-1198-33-2-09-01-0000	1/1/2002	10285	\$6,043	\$0.59
B	01-1198-33-2-09-07-0000	1/1/2002	10255	\$6,028	\$0.59
C	01-1198-33-2-09-49-0000	1/1/2002	9847	\$5,824	\$0.59
D	01-1198-33-2-09-50-0000	1/1/2002	48787.2	\$6,830	\$0.14

5. The Taxpayer filed an AB-26 property review form. Based on this informal review, the DOR made an adjustment to the value of the roadways and common areas.
6. The Taxpayer filed an appeal with the Butte/Silver Bow County Tax Appeal Board ("CTAB") on November 30, 2003, stating that the appraisals for the unsold lots in the development were too high.
7. In its December 13, 2003 decision, the CTAB reduced the values in the appeal by 25% without stating its reason for doing so.
8. As indicated earlier in this opinion both the Taxpayer and the DOR appealed the decision of CTAB. The taxpayer stated that there was "an inequity in taxation and an overvaluation by the Department of Revenue." For its part, DOR feels there is no legal justification in the record to support CTAB's reduction of 25%.

### TAXPAYER'S CONTENTIONS

The Taxpayer contends that there is no justification for the values in the vicinity of \$2.50 per square foot that DOR has used on the subject property. Taxpayer's Exhibits 4 and 5 are pictures of homes that have a total value of over \$300,000, but have land values of less per square foot than the taxpayer's properties, according to him. These properties are located in the vicinity of the subject properties.

Taxpayer stated that Butte is in a tough economic climate and that it has been a difficult environment to develop and market the subject properties. He stated that the time period of five years to complete the project was soon coming up, and that they would not be able to complete the entire project in that time. According to the taxpayer, any development project that cannot be completed in five years is not an economically viable project.

Aside from the general economic environment in Butte, the Taxpayer cited two additional factors which make these properties difficult to market: The properties are age-restricted to people 55 years of age and above, and the size of the lots (7-8,000 sq. feet) are quite small.

Taxpayer stated that his estimate of fair value for the subject properties is in the \$1 to \$1.20 per square

foot range, which is less than half the value of the DOR appraisal.

During the AB-26 review the DOR reduced the appraisal on the roadways and common areas to 25% of the raw land values (\$168,000 for the entire parcel). Taxpayer believes that this appraisal should be reduced to 10% of the raw land value.

#### **DOR CONTENTIONS**

DOR believes that the values it has stated for the subject properties are fully supported by the market. State Exhibit "D" contains confidential data from the sale of 29 residential building sites within Neighborhood 16 in Butte. After time-adjusting the sales information the 28 properties averaged a sale price of \$26,891.79 or \$2.41 per square foot. This was slightly above the value carried by DOR on the properties of \$2.34 per square foot. A review of the sales of individual properties which make up State's Exhibit D shows that the values carried by the DOR appraisals are reflected fairly closely by the actual sales experience in the market.

DOR pointed out that several of the real estate values used by Taxpayer (such as Exhibits 2 and 9) are from the previous appraisal cycle. They do not reflect current values.

In order to support its method of valuing the common areas and roadways in the Links development DOR introduced State Exhibit "F". As shown in the exhibit the reduction for "non-buildable" areas of an open space purchase was calculated to be greater than 75%. The obverse of this statement, and the one used by DOR, was 25% "good", related to the purchase price for raw land. This is the method that was used by DOR in the AB-26 review, and resulted in the values for the common areas and roadways of the project.

#### **BOARD'S DISCUSSION**

The ultimate question presented here is whether DOR has supported the values it has applied to this project by demonstrating that they reflect the marketplace in which they are found. We believe DOR has done so.

At the end of the hearing the Board requested that DOR submit the CALP model for the neighborhood of the subject property. This confidential information was submitted and shows a high degree of correlation between vacant land sales within the same neighborhood as the subject property and the subject property.

The regression analysis of 38 sales shows that an 8,000 square foot lot would have a value of \$19,600 which works out to \$2.45 per square foot. In looking at the subject property, Lot 15 is close to that size, being 8094

square feet. Its value by DOR is \$19,788 or \$2.44 per square foot. It is hard to come much closer than that in the inexact science of property appraisal. It certainly supports the values that were used by the DOR to appraise the building lots in the subject development.

There remains the valuation of the roadways and common areas. Practically the only evidence received by the Board on this issue was contained in Exhibit "F" which was an analysis of the "non-buildable" portion of a rural subdivision in Deer Lodge County. For the limited purpose in which it was offered, the exhibit does support the "25% good" used by DOR in appraising the roadways and common areas.

We are unable to find any support in the record for the "25% reduction" ordered by CTAB at the end of their hearing and continued in their Order. There must be a legal or factual basis for any reduction in values ordered by this Board or any county tax appeal board. Albright v. State, 281 Mont. 196,206, 933 P.2<sup>nd</sup> 815 (1997) (stating that "market data approach to value" is an important method of establishing value).

The further issues raised by the Taxpayer concerning the age restrictions on the property and the size of the lots are not shown by any market data to adversely affect



the value of the properties. It is entirely possible that both of the factors actually enhance the value of the property on a per unit (square foot) basis, but in any event there is simply no indication from market data that these factors adversely affect value in the manner that the Taxpayer has asserted.

#### 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. State of Montana, 281 Mont. 196, 933 P.2<sup>nd</sup> 815 (1997).
5. The decision of the Butte/Silver Bow County Tax Appeal Board is hereby modified and the values contained in State's Exhibit "E" and the Appendix to this Opinion are adopted.

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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 Silver Bow County by the local Department of Revenue office at the values of the original assessment as contained in State's Exhibit "E" and in the Appendix to this Opinion. The decision of the Silver Bow County Tax Appeal Board is accordingly modified.

Dated this 21st day of April 2005.

BY ORDER OF THE  
STATE TAX APPEAL BOARD

( S E A L )

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GREGORY A. THORNQUIST, Chairman

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JOE R. ROBERTS, Member

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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 21st day of April, 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:

Mr. Jack McLeod  
Jack McLeod LLC  
1905 Holmes Avenue  
Butte, Montana 59701

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

Dorothy Thompson  
Property Assessment Division  
Department of Revenue  
Helena, Montana 59620

Mr. Joe Rask  
Silver Bow County Appraisal Office  
155 W. Granite  
Butte, Montana 59701-9256

Ms. Mary Lou Jones, Chair  
Butte/Silver Bow Tax Appeal Board  
3737 Augusta Ave.  
Butte, Montana 59701

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DONNA EUBANK

Paralegal

**Appendix A:**

**BUILDING SITES UNDER APPEAL (The Links at Country Club)**

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