

BEFORE THE STATE TAX APPEAL BOARD
OF THE STATE OF MONTANA

ANDY SKINNER,)	
)	DOCKET NOS.: PT 1997-106
Appellant,)	PT 1997-107
)	PT 1997-108
)	PT 1997-109
-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 appeals were heard on the 19th day of June, 1998, in the City of Helena, Montana, in accordance with an order of the State Tax Appeal Board of the State of Montana (the Board). The notices of the hearing were given as required by law. The taxpayer, represented by owner Andy Skinner and agent Swede Schock presented testimony in support of the appeals. The Department of Revenue (DOR), represented by appraiser Don Blatt, presented testimony in opposition to the appeals. Testimony was presented, exhibits were received, and a schedule was established for a post-hearing submission.

Upon receipt of the submission, the Board then took the appeals 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 and of the time and place of the hearings. All parties were afforded the opportunity to present evidence, oral and documentary.

2. The properties involved in these appeals are described as follows:

PT 1997-106 Land only, Lot 1, Block 1, Inter-City Subdivision, Helena, Lewis and Clark County, State of Montana.

PT 1997-107 Land only, Lot 4, Block 1, Inter-City Subdivision, Helena, Lewis and Clark County, State of Montana.

PT 1997-108 Land only, Lot 6, Block 1, Inter-City Subdivision, Helena, Lewis and Clark County, State of Montana.

PT 1997-109 Land only, Lot 3, Block 1, Inter-City Subdivision, Helena, Lewis and Clark County, State of Montana.

3. For the 1997 tax year, the DOR originally appraised the subject properties at values of:

PT 1997-106 - \$34,568; PT 1997-107 - \$37,679
PT 1997-108 - \$28,066; PT 1997-109 - \$24,371

4. The DOR amended the original values through the AB-26 review process to:

PT 1997-106 - \$27,345; PT 1997-107 - \$30,030
PT 1997-108 - \$20,460; PT 1997-109 - \$18,885

5. The taxpayer appealed the amended values to the

Lewis and Clark County Tax Appeal Board (LCTAB) requesting values of:

PT 1997-106 - \$19,855; PT 1997-107 - \$12,657
PT 1997-108 - \$14,000; PT 1997-109 - \$9,000

6. In decisions dated February 24, 1998, the LCTAB disapproved the taxpayer's appeals.

7. The taxpayer appealed those decisions to this Board on March 13, 1998 stating: **A**Market value of this property was not considered. All sales of property of comparables not looked at in area.@"

TAXPAYERS- CONTENTIONS

Mr. Skinner testified that lot 1 was purchased from the City of Helena and lot 4 was purchased from Lewis and Clark County. Mr. Skinner testified **A**the law states that the property cannot be sold for less than fair market value which is half of what the DOR has determined the market value to be.@"

Mr. Skinner indicated that these properties were not tax deed sales but rather negotiated transactions at fair market value.

Taxpayer's exhibit #2 is a copy of the **A**Purchasers Settlement Statement@ for lots 1 and 5. Lot 5 is not a part of this appeal.

Mr. Skinner testified that lots 3 and 6 were purchased in July of 1994 for approximately \$12,000 from a corporation located in the State of Washington .

The taxpayer testified that a high pressure gas line

intersects lots 3 and 4.(exhibit #1) With the existence of the gas line, there are development restrictions on these lots.

Mr. Skinner testified the City of Helena has required that sewer and water be in place prior to subdivision development. The subject subdivision is platted but sewer and water are not in place, and it is the taxpayer's contention that the costs to install this infrastructure make the subdivision development unfeasible at the present time.

Mr. Skinner testified the DOR has valued the subject properties based on sales of smaller parcels already developed with water, sewer, and streets; therefore, these properties are not comparable to the subject lots.

Mr. Skinner testified to sales of vacant land which, in his opinion, are most similar to the subject lots. These sales are identified on taxpayer's exhibit #3 from the LCTAB hearing:

	<u>Size/acres</u>	<u>\$/Acre</u>	<u>Sale Date</u>
Sale #1	5.64	\$ 5,000	1993
Sale #2	23+	\$ 6,000	1996
Sale #3	20	\$12,000	1995
Sale #4	63+	\$ 6,000	1995

A breakdown of the taxpayer's requested values is as follows:

	<u>Value</u>	<u>Size (sf)</u>	<u>\$/SF</u>	<u>Size (ac)</u>	<u>\$/Acre</u>
Lot 1	\$19,855	79,420	\$.25	1.82	\$10,909
Lot 3	\$ 9,000	54,826	\$.16	1.26	\$ 7,151
Lot 4	\$12,657	87,197	\$.15	2.0	\$ 6,323
Lot 6	\$14,000	59,415	\$.24	1.36	\$10,264

DOR-S CONTENTIONS

Mr. Blatt testified Mr. Skinner filed an AB-26 Property Adjustment Form in 1996 and the market values for that tax year were adjusted downward by 50% due to the lack of sewer and water. The value of the subject lots for the 1997 reappraisal cycle was determined to be \$15,000 per acre:

	<u>Size (ac)</u>	<u>\$/Acre</u>	<u>Market Value</u>
Lot 1	1.83	\$15,000	\$27,345
Lot 3	1.259	\$15,000	\$18,885
Lot 4	2.002	\$15,000	\$30,030
Lot 6	1.364	\$15,000	\$20,460

Mr. Blatt presented exhibit B which is titled **ALand Value Modeling@**. This exhibit illustrates five land sales north of the subject property.

DOR-s exhibit A, pages 8 & 9 is titled **AYellowstone Pipe Line Company Right of Way Development Provisions@**. Item #13 states: **ANo permanent structure will be built within 25 feet of Company line without prior approval from Company@**. Mr. Blatt testified the areas affected by the high pressure gas restriction are:

<u>Lot</u>	<u>Pipeline Affected Area SF</u>	<u>Gross Area SF</u>	<u>Net Buildable Area SF</u>
3	22,876	54,826	31,950
4	15,972	87,197	71,225

Mr. Blatt testified the information that the DOR has on file regarding taxpayers sale #1 is \$8,981 per acre.

DISCUSSION

Lack of accessibility, sewer, and water and the

presence of the pipeline are major factors that impact the value of the subject properties.

The five vacant land sales presented by the DOR illustrate the following:

<u>Sale #</u>	<u>Sale Date</u>	<u>Sale Price</u>	<u>Size SF</u>	<u>Size Acres</u>	<u>Sale SF</u>	<u>Sale Acre</u>
1	2/94	\$21,000	26,860	.617	\$.78	\$34,057
2	5/93	\$16,590	47,891	1.10	\$.35	\$15,415
3	12/95	\$110,000	89,457	2.054	\$1.23	\$53,563
4	3/93	\$35,000	96,360	2.212	\$.36	\$15,822
5	11/93	\$19,000	24,090	.553	\$.79	\$34,356

It was testified that these five sales are on paved streets, have sewer and water and are not affected by the pipeline. The DOR sales may offer support for valuation purposes of lots with sewer, water, and paved streets, but there are considerable differences between the sales presented by the DOR and the subject lots.

The taxpayer presented testimony of land sales which more accurately represent the physical characteristics of the subject property (i.e. sewer, water, and streets).

The taxpayer testified he purchased lots 3 and 6 from a corporation located in the State of Washington in July of 1994 for approximately \$12,000. There is no evidence or testimony to dispute this was not an ~~arms-length~~ transaction. The Board requested information from the DOR, through a post-hearing submission, to provide additional evidence to support the DOR position that the sales from the City of Helena and Lewis and Clark County were not ~~arms-length~~ transactions. In

addition, Mr. Blatt was asked to provide the same information regarding the transactions for lots 3 and 6. Mr. Blatt's post-hearing submission regarding the requested information reads as follows:

Mr Skinner purchased lots 3 and 6 in block 1 of Inter-City Commercial Subdivision on 6-24-94 (PT 108-109). I do not know the terms or conditions of this sale. Please note that the seller is a partnership out of Spokane Washington. The purchase price indicates a per square foot sale price of 7.8 cents. I would not call this a valid sale based on my knowledge of other vacant land sales in the area. (emphasis added)

Mr Skinner purchased lot 4 block 1 of Inter-City Commercial Subdivision on 2-8-96 (PT 108). Lewis & Clark county advertised this lot for sealed bids. Mr. Skinner placed the high bid and was sold the property. The purchase price indicates a per square foot price of 14.5 cents. I would not call this a valid land sale based on my knowledge of other vacant land sales in the area; also I would not call a sale from a government entity valid. (emphasis added)

Mr Skinner purchased lots 1 and 5 in block 1 of Inter-City Commercial Subdivision on 6-19-95 (PT 106). The City of Helena along with many other lots for sale advertised these lots. Mr. Skinner made an offer of \$12,100 on 5-18-95, this was not accepted. Mr. Skinner then placed an offer of \$15,000, which was accepted. The purchase price indicates a per square foot price of 9.7 cents. I would not call this a valid land sale based on my knowledge of other vacant land sales in the area also I would not call a sale from a government entity valid. (emphasis added)

Mr. Blatt was given the opportunity to further research the transactions for lot 3 and 6. Mr. Blatt's comment ~~A~~Please note that the seller is a partnership out of Spokane Washington., is not a reason to invalidate a sale. A part of the post-hearing submission is a copy of the Warranty Deed along with the Realty Transfer Certificate (RTC) for this

transaction. The RTC states this was a cash transaction in the amount \$9,000. There is no indication from the document that this was not an ~~arm~~-length transaction. Mr. Blatt may have considerable knowledge of the real estate market in Lewis & Clark County, but this Board bases its decisions on testimony along with supporting documentation.

'15-8-111, MCA. Assessment - market value standard - exceptions (2)(a) 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 sell and both having reasonable knowledge of relevant facts.

The transactions for lots 1 and 4 from Lewis & Clark County and the City of Helena, respectively, offers a value indication but it is the Board's opinion these transactions do not meet the criteria of an ~~arm~~-length transaction. ('7-8-2301, MCA. Disposal of county tax-deed land.) These types of transactions may not meet the test of an ~~arm~~-length transaction, but, it does not definitely indicate that it is not the market value at the time. In summary, these types of transactions may be an indication of what the market for this type of property was experiencing.

Simply applying a value of \$15,000 per acre to the subject lots does not adequately answer the question of the taxpayer and the Board: How were DOR land sales adjusted to make them comparable to the subject lots?

The taxpayer's requested values exceed that which

were paid on three of the four lots.

	<u>Purchase price</u>	<u>Price per acre</u>	<u>Requested value</u>	<u>Price Per acre</u>
Lot 1	\$15,000	\$8,228	\$19,855	\$10,891
Lot 3	\$ 4,319	\$3,431	\$ 9,000	\$ 7,149
Lot 4	\$12,657	\$6,322	\$12,657	\$ 6,322
Lot 6	\$ 4,681	\$3,432	\$14,000	\$10,264

The taxpayer referenced four vacant land sales for the Board to consider in determining the value for his lots based on his opinion of overall true comparability .

	<u>Size/acres</u>	<u>\$/Acre</u>	<u>Sale Date</u>
Sale #1	5.64	\$ 5,000	1993
Sale #2	23+	\$ 6,000	1996
Sale #3	20	\$12,000	1995
Sale #4	63+	\$ 6,000	1995

The DOR testified to a purchase price of \$8,981 per acre for sale #1. The DOR did not include this sale nor other sales presented by the taxpayer when determining the market value.

The DOR's land value modeling was developed by using sales of fully developed lots (i.e. sewer, water, and streets).

The DOR made no attempt to consider sales of land without the aforementioned infrastructure. The DOR's \$15,000 per acre determination of value for the subject lots is unsubstantiated by the evidence presented. The Board agrees with the taxpayer that the land sales presented by the DOR are not comparable to the subject parcels.

It is the Board's opinion the values of lots 3 and 4 are impacted by the high pressure gas line. This is evident by

the development restrictions placed on the property. The value requested by the taxpayer on a per acre basis for these lots is less than lots 1 and 6, which are not impacted by the gas line.

It is true, as a general rule, that an 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 J. Michunovich, et al, 149 Mont. 347.428 P.2d 3.(1967). The DOR could not provide evidence to support its land valuation model, exhibit B. This Board has no other option than to grant the taxpayer's appeal.

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 J. Michunovich, et al, 149 Mont. 347.428 P.2d 3.(1967).

4. The appeal of the taxpayers is hereby granted and the decision of the Lewis and Clark County Tax Appeal Board is reversed.

Dated this 21st day of September, 1998.

BY ORDER OF THE
STATE TAX APPEAL BOARD

PATRICK E. MCKELVEY, Chairman

(S E A L)

GREGORY A. THORNQUIST, 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.