

BEFORE THE STATE TAX APPEAL BOARD
OF THE STATE OF MONTANA

THE DEPARTMENT OF REVENUE)	
OF THE STATE OF MONTANA,)	
Appellant,)	DOCKET NO.: PT-1999-28
)	
-vs-)	
)	
UNITED INDUSTRY,)	FACTUAL BACKGROUND,
)	CONCLUSIONS OF LAW,
Respondent.)	ORDER and OPPORTUNITY
)	<u>FOR JUDICIAL REVIEW</u>

The above-entitled appeal was heard on July 19, 2000, in the City of Billings, 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.

Maureen Celander, an appraiser with the Yellowstone County Appraisal Office, presented testimony in support of the Department of Revenue's appeal. The taxpayer, represented by Mike Mathew, agent, presented testimony in opposition thereto. Testimony was presented and exhibits were received and a schedule for a post-hearing submission from the DOR and an opportunity for a response from the taxpayer was established. The duty of the Board is to determine the market value of the property based on the preponderance of the evidence. The State of Montana defines "market value" as **MCA §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. (2)(a) Market value is a value at which property would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or to sell and both having a reasonable knowledge of relevant facts.

DOR is the appellant in this proceeding and therefore has the burden of proof. 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).

Based on the evidence and testimony, the decision of the Yellowstone County Tax Appeal Board is reversed.

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 property which is the subject of this appeal is land only and is described and valued for tax year 1999 as follows:

Lot(s)	Block	Land Area (SF)	Land Value	Assessor #
1 & 2	45, Fosters Addition	7,000 SF	\$49,000	A73040
3 & 4	45, Fosters Addition	7,000 SF	\$49,000	A73050
7 & 8	45, Fosters Addition	7,000 SF	\$49,000	A73070
9 – 12	45, Fosters Addition	14,000 SF	\$98,000	A73080
13 & 14	45, Fosters Addition	7,000 SF	\$49,000	A73090
15 & 16	45, Fosters Addition	7,000 SF	\$49,000	A73100
17 & 18	45, Fosters Addition	7,000 SF	\$49,000	A73110
20	45, Fosters Addition	3,500 SF	\$24,500	A73130
Total		59,500 SF	\$416,500	

3. On January 13, 2000, the taxpayer appealed to the Yellowstone County Tax Appeal Board, citing the following reason for appeal:

"Land is grouped with medical corridor. It is community commercial and similar CC (community commercial) carries a lower value."

4. In its March 31, 2000 decision, the County Board reduced the subject land value to \$4.90 per square foot:

The Board is of the opinion this land is not inside the medical corridor plus being very difficult to get to. The Board places the land value at \$4.90 per square foot.

5. The DOR then appealed that decision to this Board on April 27, 2000 because:

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

STATEMENT OF ISSUE

The issue before the Board is the market value of the real property (land) as of January 1, 1996.

DOR'S CONTENTIONS

The taxpayer filed an AB-26 form for property review on June 2, 1999 with the Department of Revenue in Yellowstone County. The following reason was cited in the request that the DOR review the subject appraisal:

Property is assessed as if it were in the medical corridor. It is a block south & 1½ blocks west of the corridor. Other community commercial zoned land in the immediate area is priced at \$3.65 (per square foot) (0927-03-2-14-01). Travelodge on N 33rd at \$4.90 (per square foot). Thrifty Car Rental parking on 26th and 6th Avenue No.

The DOR performed a review of the property and its appraisal and answered the request on December 14, 1999. No adjustments were made to the subject appraisal: *"All property in this review is valued similarly and comparable to all other commercial lots within this neighborhood. Due to SB184-Value has been phased down fully from previous cycle.*

DOR Exhibit A contains a copy of the property record card for the subject property (23 pages), the neighborhood map with land sales identified (two pages), AB-26 property adjustment form (one page), Billings downtown neighborhood map, (one page), a Billings medical corridor map (one page), and a document entitled "examples of medical corridor sales" (one page).

Page 29 of DOR Exhibit A is a map of downtown Billings. The subject property is located in Neighborhood 611, a commercial

district.

Page 30 of DOR Exhibit A is a zoning map showing the delineations of the Billings medical corridor. The subject property is located in block 45, outside the medical corridor. Page 31 contains sales information from within the medical corridor. These sales were not used to value the subject land. Ms. Celander testified that the DOR does not typically consider sales influenced by the presence of the medical corridor to value properties outside this boundary. This exhibit references three sales: A December of 1989 sale at \$18.21 per square foot; a December of 1992 sale at \$17.87 per square foot; and an August 1990 sale at \$11.62 per square foot. According to Ms. Celander, additional costs were incurred with these properties for demolition of existing structures to provide parking area.

She pointed out that these sales prices demonstrate the influence of the medical corridor. Most of these parcels eventually supported medical-related facilities. She feels that the DOR value is "equitable with the pricing outside the medical corridor within Neighborhood 611C."

Page 27 of DOR Exhibit A contains the computer-assisted land pricing (CALP) model for Neighborhood 611C, in which the subject land is located, used to value the property at issue. The base lot size established by the DOR for this model is 14,000 square feet with a base rate and an adjusted rate of \$7 per square foot. The

model references three sales: one vacant parcel and two from which the improvement value was abstracted. The vacant land sale occurred in November of 1992 for \$45,000 on a lot size of 8,680 square feet. The abstracted sales both occurred in early 1995: a 4,600 square foot lot sold for \$61,500 and a 14,000 square foot lot sold for \$86,700. The adjusted unit price for the vacant land sale was determined by the DOR to be \$6.27 per square foot. The adjusted unit prices for the abstracted sales were \$14.18 per square foot for the 4,600 square foot lot and \$6.60 per square foot for the 14,000 square foot lot.

The DOR did not perform an income analysis of the subject property due to inadequate income and expense information. The DOR testimony was that income and expense information was requested, but not received, from the taxpayer. (Mr. Mathew testified that, to the best of his knowledge, no such request was received.)

Ms. Celander also looked into income and expense information from Diamond Parking, a Seattle-based company, which operates parking lots in downtown Billings, but was told that the information would not be made available. She also looked at "parking within the central business district of lots that they owned, that they lease out, and they vary depending on the location of where the parking lots are and they have both improved, paved parking and unimproved, gravel parking."

As a post-hearing submission, the Board asked the DOR to

provide the CALP (computer-assisted land pricing) model for Neighborhood 621. Neighborhood 621 has been valued by the DOR at \$4.90 per square foot and is the neighborhood that has been compared to the subject, in terms of contrasting assessed values, in the taxpayer's arguments. CALP model number 126, encompassing Neighborhoods 611A and 621A, has determined a base size of 7,000 square feet, and a base and an adjusted rate of \$2.70 per square foot. Seven sales were used in this model, summarized below:

					<i>Adjusted unit price per square feet</i>
One	9/92	7,000	\$24,450	\$29,829	\$4.26
Two	8/95	7,000	\$42,000	\$43,155	\$6.17
Three	2/93	7,000	\$1,400	\$1,670	\$0.24
Four	7/92	7,000	\$20,300	\$24,989	\$3.57
Five	1/92	8,190	\$7,700	\$9,733	\$1.19
Six	1/92	7,500	\$9,300	\$11,755	\$1.57
Seven	2/92	7,000	\$14,800	\$18,626	\$2.66

CALP model number 129, encompassing Neighborhoods 615C, 618C and 621C, has determined a base size of 7,000 square feet and a base and an adjusted rate per square foot of \$3.65.

Five sales were used in this model, summarized below:

					<i>Adjusted unit price per square feet</i>
One	7/92	6,500	\$39,000	\$48,009	\$7.39
Two	1/95	9,750	\$25,000	\$26,650	\$2.73
Three	10/93	7,000	\$25,400	\$29,172	\$4.17
Four	2/92	14,000	\$36,900	\$46,439	\$3.32
Five	1/94	14,070	\$42,900	\$48,563	\$3.45

TAXPAYER'S CONTENTIONS

Taxpayer's exhibit 1 contains photographs of what he assumed were the locations of the DOR's three sales that were used to determine a value for the subject land. Mr. Mathew's testimony was that he wasn't actually sure of the precise locations because he was under the impression that the DOR could not divulge that information. Therefore, he took photographs of properties he guessed were the DOR comparable properties.

The photograph of sale number one is "down the street a block" (from the subject property). "The building you see on the front corner . . . is United Blood Bank . . . there's an older house on there towards the end of the block. There is a large apartment complex. The vacant land, I would assume, behind the house and the apartment complex, there is a parking lot in there, so if in fact the Department of Revenue has identified that as vacant land, it may be some land in there. I didn't really see any vacant land that seemed not attached to other properties, myself, when I made a physical review of the area. The view of location number two, the property on the left side of that picture is in fact an architectural office. The property directly kind of centered in the picture is in fact a residential house at present. However, also located on that block . . . is an old historic home called "The Castle" in the community . . . so there has been some conversion of some of the older structures there. Comp number

three, again I'm not identifying that identifying that as the comp, I'm just looking at what Department of Revenue put as a location and took a picture in that direction. That is the former Qwik-Way store. . . that has been taken over by the United Blood Bank, the office building across the street . . . and I understand the Department's problems with confidentiality, so I'm identifying areas where those comps came from so you have some view with the area."

Mr. Mathew concurred with the DOR that sales from the medical corridor should not be used to value property outside the medical corridor. Mr. Mathew also concurred with the DOR that vacant land sales in the area of the subject property are virtually nonexistent.

The subject property is zoned community commercial (CC) and valued by the DOR at \$7.00 per square foot as illustrated on exhibit #1. It is the opinion of Mr. Mathew that the subject property be valued consistently with other CC land adjacent to the Central Business District (CBD). The property that Mr. Mathew refers to is located southwest of the subject and is valued at \$4.90 per square foot by the DOR. (Exhibit #1) Mr. Mathew is of the opinion that the medical corridor has influenced the DOR's value of \$7.00 per square foot.

BOARD DISCUSSION

When Mr. Mathew was asked if he analyzed sales to arrive at

the requested value of \$4.90 per square foot, he indicated that this was exclusively an equity issue based on the value of other parcels with similar zoning adjacent to the CBD.

Market value indications can and will vary based on location. The value of a parcel will certainly be affected by its location. The types of property that are located or surround the property being valued can affect the value of a parcel. Being located near or adjacent to the medical corridor could have positive impact on the subject parcel. The best appraisal technique for determining the impact on location is by analyzing sales. The DOR has identified three sales in which the value of \$7.00 per square foot was determined. The Board understands the difficulty the DOR faces when establishing land values in areas that have very little vacant land available. The DOR testified that, of the three sales, two were extracted land values. *The Appraisal of Real Estate* 11th Ed. Page 89, defines Extraction as, *Land value is estimated by subtracting the estimated value of the depreciated improvements from the known sale price of the property. This procedure is frequently used when the value of the improvements is relatively low or easily estimated.*

The DOR has relied heavily on the extraction method in establishing the land value for neighborhood 611C, but neglected to submit evidence as to what improvements existed at the time of the

sale or the depreciated value of those improvements. In order for the DOR to strengthen an argument for value, it should be prepared to present all the supporting documentation or analysis that went into establishing its purported value. In this appeal, that value is \$7.00 per square foot.

The DOR and the taxpayer's representative agree that sales within the medical corridor are superior to the subject property. This is also supported by the three medical corridor sales presented by the DOR in exhibit A, page 31. These three sales suggest the following:

<i>Sale #</i>	<i>Sale price per square foot</i>
#1	\$18.21
#2	\$17.87
#3	\$11.62

The price per square foot of the subject property should be less based on the consensus that the medical corridor is a superior location. In fact, the DOR has valued the subject at a lower price per square foot than the above sales suggest.

The taxpayer's representative presented an argument based on the value of a separate neighborhood. While it is undisputed that the zoning for the two neighborhoods is the same, community commercial zoning, is not the only characteristic that impacts value. There has been zero evidence presented by the taxpayer in support of the \$4.90 per square foot value request. The Montana Supreme Court held in State ex rel. Schoonover v. Stewart, 89 Mont.

257 (1931), that; "And in no proceeding is one to be heard who complains of a valuation which, however erroneous it may be, charges him with only a just proportion of the tax. If his own assessment is not out of proportion, as compared with valuations generally on the same roll, it is immaterial that some one neighbor is assessed too little; and another too much." (Emphasis supplied)

The evidence best supports a land value of \$7.00 per square foot for the various parcels of this 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. **§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. 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

//

//

ORDER

IT IS THEREFORE ORDERED by the State Tax Appeal Board of the State of Montana that the subject land shall be entered on the tax rolls of Yellowstone County by the local appraisal office of that county at the 1999 tax year value of \$416,500. The appeal of the Department of Revenue is therefore granted and the decision of the Yellowstone County Tax Appeal Board is reversed.

Dated this 17th day of October, 2000.

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 17th day of October, 2000, 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:

Mike Mathew
Agent
1119 North 31st Street
Billings, Montana 59101

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

Yellowstone County Appraisal Office
175 North 27th Street
Suite 1400
Billings, Montana 59101

Elwood "Woody" Hannah
Chairman
Yellowstone County Tax Appeal Board
2216 George Street
Billings, Montana 59102

Donna Eubank, paralegal