

BEFORE THE STATE TAX APPEAL BOARD
OF THE STATE OF MONTANA

UNITED INDUSTRY,)	
)	
Appellant,)	DOCKET NO.: PT-1999-30
)	
-vs-)	
)	
THE DEPARTMENT OF REVENUE)	FACTUAL BACKGROUND,
OF THE STATE OF MONTANA,)	CONCLUSIONS OF LAW,
)	ORDER and OPPORTUNITY
Respondent.)	<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.

The taxpayer, represented by Mike Mathew, agent, presented testimony in support of the appeal. Maureen Celander, an appraiser with the Yellowstone County Appraisal Office, 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.

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 affirmed.

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 described as follows:

Land only described as Lots 13 through 24, Block 2, of the Billings Original Townsite, and Lots 13 and 14, Block 57, Foster's Addition to the City of Billings, County of Yellowstone, State of Montana. (Assessor ID number A-00016).

3. For the 1999 tax year, the DOR appraised the subject land at a value of \$9.94 per square foot, or \$417,550.

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

This is land used for parking. Adjacent land is priced much lower.

5. In its March 31, 2000 decision, the County Board denied the taxpayer's appeal, stating:

The Board does not agree with the concept of land prices being so much higher on one side of the street than the other side in the downtown area but the Board does not have the authority to change it. Denied.

6. The taxpayer then appealed that decision to this Board on May 4, 2000 because:

DOR sales to defend current value show a value of \$6.50 average for the 6 sales that they have in their defined neighborhood sales area.

8. At the hearing before this Board, Mr. Mathew amended the taxpayer's requested value to \$6.25 per square foot, or \$262,500.

STATEMENT OF THE ISSUE

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

TAXPAYER'S CONTENTIONS

Mr. Mathew testified that he had requested a value of \$4.90 per square foot before the county tax appeal board on the basis of

an equity issue detailed during the hearing in Department of Revenue v. United Industry, PT-1999-28.

However, based upon the sales information he received at the hearing before the county tax appeal board, he is requesting an amended land value of \$6.25 per square foot. Of the seven sales in DOR CALP (computer-assisted land pricing) model 130, encompassing Neighborhoods 617C and 619C, two are located within the central business district (CBD) of downtown Billings. The remaining five sales are in Neighborhood 617, as is the subject property. Mr. Mathew included one additional sale. This sale involves the parking lot located behind a Burger King restaurant. This vacant 10,500 square foot lot sold for \$73,500 or \$7 per square foot in April of 1992.

Mr. Mathew excluded the two DOR sales located within the CBD, because the location is superior to the subject, and totaled the remaining five DOR sales plus the Burger King sale and divided by six to arrive at the requested value of \$6.25 per square foot.

The taxpayer filed an AB 26 form for property review with the DOR on June 10, 1999. The review request was answered by the DOR on December 20, 1999, with the notation:

A review of the property was made. The downtown area is very complex with 10 NBHDS, both Central Business District and Perimeter Cen. Bus. Dist. This property valuation is comparable with all commercial land valuation within its NBHD area.

DOR'S CONTENTIONS

DOR Exhibit A contains a copy of the property record cards for

the subject property, a neighborhood map showing the location of sales used to value the subject, and the CALP (computer-assisted land pricing) model for the subject neighborhoods 617C and 619C. Ms. Celandier stated that Neighborhoods 617 and 619 were combined for valuation purposes "because of their similarity and what we found with valuation studies within those two neighborhoods."

Seven sales were analyzed to arrive at a base size of 7,000 square feet, a base rate of \$11.40 per square foot and an adjusted rate of \$9.65 per square foot. The subject land has been assigned a value of \$9.94 per square foot for the current appraisal cycle. The sales information is summarized below:

					<i>Adjusted unit price per square feet</i>
One	9/93	24,500	\$146,600	\$169,176	\$6.91
Two	1/94	25,667	\$399,000	\$451,668	\$17.60
Three	12/93	14,000	\$91,100	\$103,626	\$7.40
Four	8/92	7,000	\$27,100	\$33,211	\$4.74
Five	4/94	54,000	\$439,500	\$490,262	\$9.08
Six	3/94	3,250	\$6,900	\$7,735	\$2.38
Seven	12/92	7,000	\$114,100	\$137,319	\$19.62

Two of above sales were vacant land and the remaining five were improved properties. The DOR value for the improvements was subtracted from the total sale price, leaving a residual value for the land.

Page nine of DOR Exhibit A references three sales of downtown Billings parking lot properties (located in neighborhoods 617, 619 and 620) offered in support of the DOR valuation of \$9.94 per

square foot for the subject property and summarized below:

			<i>Sale Price per square foot</i>
One	12/98	3 ½ lots (vacant at time of sale)	\$14.69
Two	5/99	4 lots	\$11.21
Three	3/00	2 lots	\$12.31 (plus cost of anticipated demolition of existing structures)

Page ten of the DOR Exhibit references the location (neighborhood 617) and sales information relating to previous Yellowstone County Tax Appeal Board (CTAB) decisions, summarized below:

			<i>CTAB value determination per square foot</i>
One	1993	2 lots (parking lot)	\$12.75 (\$89,250 total)
Two	1993	4 lots	\$12.75 (\$178,500 total)

Ms. Celander testified that the above decisions, made during the appraisal cycle immediately previous to the current cycle, modified the DOR's then base rate of \$14 per square foot (adjusted base rate of \$9.94 per square foot), yet recognized that the CTAB was persuaded that "parking is a premium in the downtown area."

BOARD DISCUSSION

In determining the market value for the subject, there are three basic issues that the Board will address in the following discussion:

1. DOR's land sales (Exhibit A).

2. DOR's neighborhood value transition.
3. DOR's method of determining land value.

The following table illustrates the land values for the subject neighborhood, neighborhoods 620, and 621 and the sales used by the DOR to establish the market values within those neighborhoods:

Neighborhood	#617 (subject)			#620			#621		
Base Size – square feet	7,000			7,000			7,000		
Base Rate	\$11.40			\$4.90			\$3.65		
Adjustment Rate	\$9.65			\$4.90			\$3.65		
Sales	Price	Size	\$/SF	Price	Size	\$/SF	Price	Size	\$/SF
#1	\$146,600	24,500	\$5.96*	\$38,600	7,000	\$5.51*	\$39,000	6,500	\$6.00
#2	\$399,000	25,667	\$15.55	\$26,200	7,000	\$3.74*	\$25,000	9,750	\$2.56
#3	\$ 91,100	14,000	\$6.51*	\$28,800	7,000	\$4.11*	\$25,400	7,000	\$3.63*
#4	\$ 27,100	7,000	\$3.87*				\$36,900	14,000	\$2.64*
#5	\$439,500	54,000	\$8.14				\$42,900	14,070	\$3.05*
#6	\$ 6,900	3,250	\$2.12*						
#7	\$114,000	7,000	\$16.30*						
* Denotes property sold with improvements. Land value was established by extraction method.									

The unadjusted sales price per square foot for the subject neighborhood ranges from \$2.12 per square foot to \$16.30 per square foot. This would suggest a price range for the subject property's 42,000 square feet from \$89,040 to \$684,600.

The sales in neighborhoods 620 and 621 illustrate to a great extent a narrower range on a price per square foot basis.

The DOR did not present sufficient evidence or testimony as to the process used to determine a base rate of \$11.40 per square foot or the adjusted rate of \$9.65 per square foot. Based on the map delineating neighborhood 617, it is apparent that it encompasses a large area of the downtown district. It is also evident from the

testimony that the locations of various properties within that neighborhood could vary significantly. The Board was not presented sufficient evidence or testimony to support a quantifiable adjustment based on location differences.

Mr. Mathew raised an issue of the inequity of the DOR land value between adjacent neighborhoods. The DOR established neighborhoods to the west and south are being valued dramatically less on a per square foot basis, \$3.65 and \$4.90 per square foot, compared to the subject at \$11.40 per square foot. Logic would suggest that property located further from the core of the central business district might in fact have a lower price per square foot. The DOR's values for the neighborhoods illustrated in the post-hearing submission suggest this exact situation. In this appeal, the subject property is located on the east side of North 32nd Street and has a base value of \$11.40 per square foot. Property on the west side of North 32nd Street has a base value of \$3.65 per square foot. The Board does not dispute that the DOR needs to define the neighborhood boundaries in order to comply with ARM, 42.18.112 Commercial Reappraisal Plan. But, it is difficult for the Board to comprehend how property in one neighborhood separated by either an alley or street can change so dramatically in such a short distance and that change in value would be so great. The DOR presented the CALP models for these adjacent neighborhoods in its post-hearing submission, but did not offer any indication of where

these sales are located within their respective neighborhoods. There is nothing substantial in the record to indicate that the values in the adjacent neighborhood are accurate. For all this Board knows, they could be low. In Patterson v. Department of Revenue, 171 Mont. 168, 557 P.2d 798 (1976). The court stated, "When the taxpayer's property is appraised at market value he cannot secure a reduction of his own assessment even if he is able to show that another taxpayer's property is under appraised."

The final issue is the method used by the DOR to establish the market value. Vacant land sales are the best information to consider when available. The situation the DOR is faced with in a developed area is the lack of available vacant land. When vacant land sales are not available, the DOR must rely on other means to establish land values. As was testified, two of the sales were vacant parcels and land values for the remaining five sales were determined by the extraction method. The Appraisal of Real Estate 11th Ed. Page 89, defines extraction: *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 the subject neighborhood, 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 \$9.94 per square foot. In addition, the DOR offered no support for adjustments for time or size.

The DOR's CALP (computer assisted land pricing) model illustrates a sale price, assessed value and a CALP value for the seven sales as follows:

<u>Sale</u>	<u>Sale Date</u>	<u>Sale Price</u>	<u>Assessed Value -1992</u>	<u>CALP Value - 1996</u>
#1 (improved)	9/93	\$146,600	\$300,476	\$248,702
#2 (vacant)	1/94	\$399,000	\$414,522	\$259,954
#3 (improved)	12/93	\$91,000	\$176,400	\$147,460
#4 (improved)	8/92	\$27,100	\$38,150	\$79,965
#5 (vacant)	4/94	\$439,500	\$594,000	\$533,144
#6 (improved)	3/94	\$6,900	\$26,244	\$43,807
#7 (improved)	12/92	\$114,100	\$113,050	\$79,965

Considering the improved sales, the DOR's allocation of value to the land makes little sense when comparing the allocated sale price to the previous cycle assessed value and the CALP value. In all but one transaction, #4, the adjustment for time suggests a negative or downward adjustment. The DOR's CALP model has employed an upward adjustment for time of .55% per month.

Disregarding any and all adjustments and only analyzing the two vacant land sales, the price per square foot would suggest \$15.55 (#2 - \$399,000/25,667 SF) and \$8.14 (#5 - \$439,500/54,000

SF).

Considering only an adjustment for size, the value suggested for the subject would be at some point between \$8.14 per square foot and \$15.55 per square foot.

Mr. Mathew arrived at his requested value of \$6.25 per square foot by averaging. Averaging will certainly result in an indication of value. The obvious problem with averaging the sales from the DOR's information is that the range of prices is extremely wide (\$2.12 SF to \$16.30 SF). Mr. Mathew excluded the DOR's two high-end sales and included one that the DOR did not consider in estimating his requested value of \$6.25 per square foot. As previously discussed, the Board will not consider the DOR land extracted values. Therefore, the two DOR vacant sales along with the taxpayer's land sale were the only sales considered by this Board.

The market value of the subject property is the issue before this Board, not the value of neighboring parcels. Therefore, this Board's opinion of value will focus on the sales deemed appropriate. Those sales are the two vacant parcels presented by the DOR and the one sale presented by the taxpayer. The unadjusted sales prices are \$15.55, \$8.14 and \$7.00 per square foot. It is the Board's opinion, based on the record, that the value of the subject property's most probable price per square foot value is \$10.00 per square foot. The DOR has determined a value \$417,550,

or \$9.94 per square foot. While the Board may not consider all the sales information presented by the DOR applicable, there is sufficient data to uphold its value of \$417,550.

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 Airlines, Inc., v. Catherine Michunovich et al., 149 Mont. 347, 428 P.2d 3, (1967)).
5. Patterson v. Department of Revenue, 171 Mont. 168, 557 P.2d 798 (1976).
6. The Board finds that the evidence presented supports it

the 1999 tax year value of \$417,550 as determined by the Department of Revenue.

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:

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