

BEFORE THE STATE TAX APPEAL BOARD
OF THE STATE OF MONTANA

RONALD & KATHLEEN)	
GESSAMAN,)	
)	DOCKET NO.: PT-2003-8
Appellants,)	
)	
-vs-)	FACTUAL BACKGROUND,
)	CONCLUSIONS OF LAW,
THE DEPARTMENT OF REVENUE)	ORDER and OPPORTUNITY
OF THE STATE OF MONTANA,)	<u>FOR JUDICIAL REVIEW</u>
)	
Respondent.)	

The above-entitled appeal was heard on May 10, 2004, in the City of Great Falls, Montana, in accordance with an order of the State Tax Appeal Board of the State of Montana (the Board). The notice of the hearing was duly given as required by law.

Ronald Gessaman, presented testimony on behalf of the taxpayers in support of the appeal. The Department of Revenue (DOR), represented by Jason Boggess and Joan Vinning, Appraisers, presented testimony in opposition to the appeal.

The duty of the Board is to determine the market value of the taxpayer's 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 Board finds that the appeal of the taxpayer shall be granted in part and denied in part and the decision of the Cascade County Tax Appeal Board shall be modified.

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 Lot 4, Block 1, 1st Supplemental Church Addition, Great Falls, Cascade County, State of Montana. Street address of 1006 36th Avenue North East. (Assessor ID number 585300).

3. For the 2003 tax year, the DOR appraised the subject land area of 10,800 square feet at \$28,620. The DOR also valued the improvements at \$127,120.
4. The taxpayers appealed the DOR's values to the Cascade County Tax Appeal Board (County Board) citing the following reasons for the appeal, and requesting the land be valued at \$23,775 and improvements at \$121,480:

This DOR reappraisal changes the physical characteristics of our property again. The only change in our property since the last appraisal cycle is increasing age.

5. In its October 7, 2003 decision, the County Board denied the taxpayers' appeal on the land valuation and reduced the value of the improvements to \$121,480.
6. The taxpayers then appealed the County Board's decision to this Board on November 5, 2003. The taxpayers' appeal is only for the valuation of the land.
7. On December 19, 2003 the DOR appealed the County Board's decision that modified the improvement value. This Board informed the DOR, by letter dated December 19, 2003, that the appeal was untimely; pursuant to **MCA §15-2-301 (1)** The

county tax appeal board shall mail a copy of its decision to the taxpayer and to the property assessment division of the department of revenue. If the appearance provisions of 15-15-103 have been complied with, a person or the department on behalf of the state or any municipal corporation aggrieved by the action of the county tax appeal board may appeal to the state board by filing with the state tax appeal board a notice of appeal within 30 calendar days after the receipt of the decision of the county board (emphasis supplied).

STATEMENT OF THE ISSUE

The issue before the Board is the market value of the subject land as of January 1, 2002, the base appraisal date for the current appraisal cycle.

TAXPAYER'S CONTENTIONS

The taxpayer asserts that the DOR has appraised the subject property in excess of the true market value. The modeling system developed by the DOR is recognizing land sales in a subdivision, Skyline Park, which is not comparable.

The taxpayer presented exhibit T-VII (T-VII.1-TVII.6), property listings in Skyline Heights subdivision, which is immediately south of the subject property. These properties

better reflect the true value of the subject. Summarized, these exhibits illustrate the following:

Listing	Price	Area	\$/SF	Est. Value for 10,800 SF
Advertised	\$28,950	15,300	\$1.89	\$20,435
Largest Lot, Highest Price	\$36,950	19,178	\$1.93	\$20,808
Avg. Lot, Avg. of High & Low Price	\$32,950	14,041	\$2.35	\$25,344
Smallest Lot Size, Lowest Price	\$28,950	12,599	\$2.30	\$24,816
Smallest 10 Lots, Lowest Price	\$28,950	12,628	\$2.29	\$24,579
Smallest Lot, Largest Price	\$36,950	12,599	\$2.93	\$31,674
Smallest 1/3 of Lots, Lowest Price	\$28,950	13,151	\$2.20	\$23,775
	DOR Value			
Subject	\$28,620	10,800	\$2.65	\$28,620

The taxpayer presented the Board with a number of exhibits which conveyed his position as to why the DOR's value is excessive.

DOR'S CONTENTIONS

The property record card (PRC), Exhibit A, indicates the value for the improvements of \$121,480. This value is a result of the County Board's decision. The PRC also indicates 10,800 square feet of land valued at \$2.65 per square foot. Mr. Boggess presented sales information (DOR Exhibit B) pertinent to the valuation of the subject lot. This exhibit illustrates sixty-four land sales utilized by the DOR to establish a base lot size of 12,000 square feet. The base price per square foot is determined to be \$2.55 per square foot. Any land area exceeding the base lot size is valued at \$1.65 per square foot. Because the subject lot is 10,800

square feet, smaller than the model's base size of 12,000 square feet, they have determined a price per square foot of \$2.65. This higher price per square foot takes into account economies of scale.

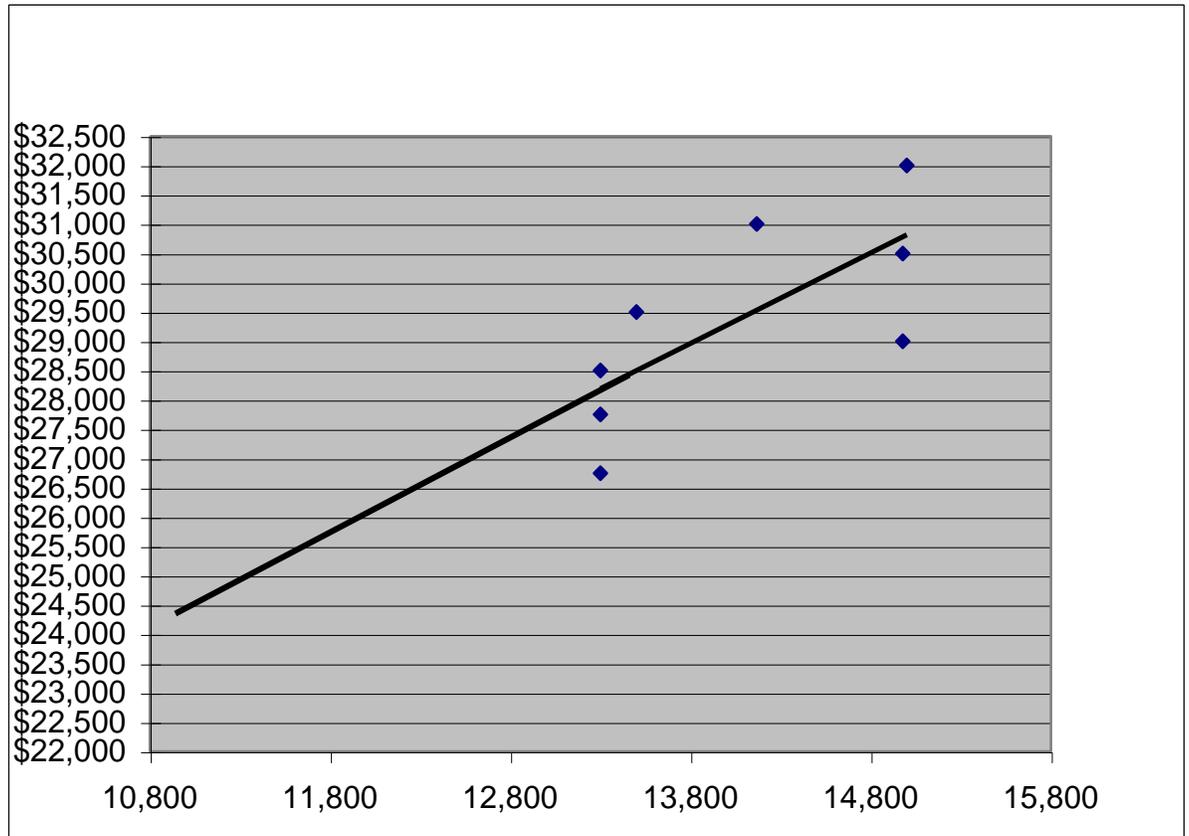
The DOR indicated that, of the sixty-four land sales, eight occurred in the Skyline Heights subdivision, adjacent to the subject. The remaining sales are located in the Skyline Park subdivision and along Valley View Drive.

BOARD DISCUSSION

The taxpayer's requested value was determined from various real estate listing that stated the starting price or price range. While this information does provide an indication of value, the best indicator is obtained from actual sales. The eight sales that occurred in the Skyline Heights subdivision would offer the best indication of value for the subject due to the close proximity. These eight sales suggest the following on a price per square foot basis.

Sale	Date	Sale Price	Size (SF)	\$/SF
9	Dec-97	\$27,750	13,300	\$2.09
28	Sep-99	\$28,500	13,300	\$2.14
32	Nov-99	\$26,750	13,300	\$2.01
41	Jul-00	\$32,000	15,000	\$2.13
45	Nov-00	\$31,000	14,168	\$2.19
46	Nov-00	\$29,000	14,978	\$1.94
47	Nov-00	\$30,500	14,978	\$2.04
64	Jun-01	\$29,500	13,500	\$2.19

The following graph would suggest that the subject property consisting of 10,800 SF should be valued at approximately \$24,400:



The size of a parcel of property is just one consideration when establishing value. Other adjustments that an appraiser would consider are location, time of sale, conditions of sale, shape, topography, etc. In reviewing the DOR Exhibit B, there are two paired sales, or properties that sold more than once. Sale #30 sold in October of 1999 for \$2.21 SF and again, #34, in May of 2000 for \$2.34 SF. This suggests an increase of .8% per month. Sale #4 sold in August

of 1997 for \$1.65 SF and again, #35, in June of 2000 for \$1.46 SF. This suggests a decrease of .3% per month. Neither of these properties is located in the Skyline Heights subdivision. The sales that occurred within the Skyline Heights subdivision, as noted in the previously illustrated table, do not suggest a discernable adjustment for time. In addition, the DOR did not provide if a time adjustment was applied to arrive at a value for 1/1/2002.

Based upon the market data in the record, the Board determines the value for the subject property to be \$2.26 SF or \$24,400.

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

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 Cascade County by the local Department of Revenue office at the value of \$24,400, as determined by this Board.

DATED this 25th day of May, 2004.

BY ORDER OF THE
STATE TAX APPEAL BOARD

(S E A L)

GREGORY A. THORNQUIST, Chairman

JEREANN 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 25th day of May, 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:

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DONNA EUBANK
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