BEFORE THE STATE TAX APPEAL BOARD
OF THE STATE OF MONTANA

| | | |
|---|---|---|
| DAN L. & PATTY L. MUNSON,<br><br>Appellants,<br><br>-vs-<br><br>THE DEPARTMENT OF REVENUE<br>OF THE STATE OF MONTANA,<br><br>Respondent. | )<br>)<br>)<br>)<br>)<br>)<br>)<br>)<br>)<br>)<br>) | DOCKET NO.: PT-2003-39<br><br>FACTUAL BACKGROUND,<br>CONCLUSIONS OF LAW,<br>ORDER and OPPORTUNITY<br>FOR JUDICIAL REVIEW |

The above-entitled appeal was heard on October 26, 2004, in Billings, Montana, in accordance with an order of the State Tax Appeal Board of the State of Montana (Board). The notice of the hearing was duly given as required by law. The taxpayers, Dan and Patty Munson, were represented at the hearing by Dan Munson. The Department of Revenue (DOR), was represented by Appraisers Genia Mollett and Vicki Nelson.

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 taxpayers and the Department of Revenue, and exhibits from both parties were received.

This Board denies the appeal of the taxpayers and establishes a land value of $33,952 and a value of $396,048 for the improvements, as determined by the DOR, for tax year 2003.

## FACTUAL BACKGROUND

1. Due, proper, and sufficient notice was given of this matter, the hearing hereon, 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 residence with a street address of 3402 Waterloo Circle, Billings, Montana, and is described as follows:

> The land and improvements located upon Lot 7, Block 1, Crystal Springs Subdivision 1st, City of Billings, County of Yellowstone, State of Montana. (Assessor Code: 000C122330)

3. For tax year 2003, the Department of Revenue appraised the subject land at a value of $33,952 and the subject improvements at a value at $478,348.

4. The taxpayers filed an appeal with the Yellowstone County Tax Appeal Board on August 20, 2003, requesting a land value of $34,000 and an improvement value of $396,000, stating the following reasons for appeal:

> **Comprehensive fee appraisal completed 10/02 set total value of house and land at**

> **$430,000. The county appraisal is 19% higher than this, & 50% higher than the 2002 value before reappraisal.**

5. In its December 18, 2003 decision, the county board denied the taxpayers' appeal, stating:

> **According to Montana Law, the appellant failed to appeal in a timely manner; therefore, the Board accepts the Dept. of Revenue's Motion to Dismiss.**

6. The taxpayers then appealed the decision to this Board on December 23, 2003, citing the following reason for appeal:

> **Please accept this letter as an attachment to the Property Tax Appeal Form, Docket # A-9-03, filed with the Yellowstone County Tax Appeal Board on 8/20/03, as a letter of explanation as to the reasons why this appeal is being filed with the State of Montana Tax Appeal Board.**
>
> 1. **The current Yellowstone County Assessment of my home and a fee appraisal of the same property differ by $82,300.**
> 2. **I submitted an AB-26 and Tax appeal form to the Yellowstone County on 8/20/03 and was told that it was 2 days late to file for 2003.**
> 3. **There was no filing deadline date specified on the assessment notice, just a requirement to file an appeal within 30 days. I do not know with certainty on what date I received this assessment. I do not believe that the county can guarantee with certainty that the 30-day window had passed for me. Rather, they are relying on the assumption that most mailings should have been received by 7/18/03.**

4. **The Yellowstone County Tax Appeal Board heard the case on 12/4/03 even though the County submitted a motion to dismiss the case on grounds of late filing.**
5. **The Yellowstone County Tax Appeal Board said that they would issue a ruling, and that I would hear from them within 10 days.**
6. **On 12/18/03, the Yellowstone County Tax Appeal Board disapproved the tax appeal due to late filing. I received the letter on 12/19/03.**
7. **I find it discriminatory that a taxpayer filing an appeal is held to a more stringent standard of timeliness than the Yellowstone County Tax appeal Board. I am alleged to be tardy 2 days infilling yet the Yellowstone County Tax Appeal Board was 5 days tardy in responding to my appeal.**
8. **Regardless of the timing, the assessment discrepancy must be settled. If it means that I must wait until 2004 to file this appeal, I will be forced to. If the State of Montana Tax Appeal Board will agree to hear this case for the 2003 tax year, I am honored.**

7. At the hearing before this Board, Mr. Munson amended the requested value to $395,000 total for land and improvements, or $35,000 for land and $360,000 for the improvements.

8. The DOR also amended its improvement value before this Board from $478,348 to $396,048, for a total property value of $430,000.

//

//

## TAXPAYERS' CONTENTIONS

Mr. Munson testified that he and his wife designed and built the subject 4,310 square foot house in 1998 for $275,000, including land. The DOR's 2003 assessment notice of $512,000, therefore, was unacceptable to them. Mr. Munson does not believe that he could sell the home for the assessed value. Originally, the taxpayers requested a value of $430,000 because they refinanced the house two years ago and the bank's fee appraisal found that value as of October 31, 2002. (Taxpayers' Exhibit 1).

Mr. Munson compared the three comparable properties selected by the DOR for its sales comparison approach (Taxpayers' Exhibit 2) to his property on an assessed value per square foot basis. He found that the average assessed value (comparing the four properties), was $585,082, or $132.34 per square foot.

Taxpayers' Exhibit 3 is a comparison of the DOR's assessed values for "the larger homes in our subdivision." Mr. Munson acknowledges that his is the largest home in his subdivision and that they did overbuild for the neighborhood. The average of the assessed value of the five

properties he selected for study, and his own home, was $69.68 per square foot.

Mr. Munson consulted two realtors in an attempt to determine the market value of the subject property. Taxpayers' Exhibit 4 is a comparison of four actual sale prices in the subject subdivision. The average square feet of living area for the four properties was 3,166, the average sales price was $277,350 and the average overall sales price per square foot was $87.32. Based upon this sales analysis, Mr. Munson determined that the subject home's market value should be $376,348.86. This is the price at which he feels he could expect to sell the property.

Mr. Munson asked Rachel Cox of Oakland and Company Realty to prepare a market analysis for the subject home (Taxpayers' Exhibit 5). In her analysis, performed using actual sales data from two sales, and one pending sale, she determined a market value ranging from $375,000 to $395,000.

Taxpayers' Exhibit 6 summarizes the above approaches to comparison (DOR assessed values, neighborhood actual sales, fee appraisal, comparative market analysis). Mr. Munson concluded that "something under $400,000 is appropriate."

## DOR'S CONTENTIONS

DOR Exhibits A, B and C contain photographs of the subject property, the property record card for the subject property, photographs and 2001-2004 sales data pertinent to the subject subdivision, and a copy of ARM 42.20.455 (Consideration of Independent Appraisals as an Indication of Market Value), respectively.

Ms. Mollett testified that the DOR amended its original value based upon the fee appraisal performed on the subject property, as of October 31, 2002, for refinance purposes. ARM 42.20.455 provides for the consideration of independent fee appraisals as an indication of market value. Ms. Mollett stated that this fee appraisal meets of all the requirements set forth in ARM 42.20.455, and "actually is a much better indication of value than our $512,000 that we originally had on there and that's why the Department has agreed to go with the $430,000 that is indicated on this fee appraisal done by the licensed fee appraiser."

//

//

//

## BOARD'S DISCUSSION

The Board finds the independent fee appraisal is the best indicator of market value, pursuant to ARM 42.20.455, for the tax year in question and will uphold the DOR's amended value of $430,000 in total value, which is based upon that fee appraisal.

## CONCLUSION OF LAW

1. This Board has jurisdiction of the matter under appeal pursuant Section 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. ARM 42.20.455. Consideration of Independent Fee Appraisal as an Indication of Market Value. (1) When considering any objection to the appraisal of property, the department may consider independent appraisals of the property as evidence of the market value of the property. . .
4. The appeal of the taxpayers is denied.

//

//

## 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 Yellowstone County by the local Department of Revenue office at a land value of $33,952 and at a value of $396,048 for the improvements, as determined by the DOR.

Dated this 7th day of February, 2005.

BY ORDER OF THE
STATE TAX APPEAL BOARD

( S E A L )

_____
GREGORY A. THORNQUIST, Chairman

_____
JERE ANN 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 7th day of February, 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:

Dan and Patty Munson
3402 Waterloo Circle
Billings, Montana 59101-8000

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

Ms. Dorothy Thompson
Property Tax Assessment
Department of Revenue
Mitchell Building
Helena, Montana 59620

Mr. Elwood Hannah, Chairman
Yellowstone County Tax Appeal Board
2216 George Street
Billings, MT. 59102

Yellowstone County Appraisal Office
175 N. 27th St, Suite 1400
Billings, MT. 59107-5013

_____
Donna Eubank
Paralegal