

BEFORE THE STATE TAX APPEAL BOARD

OF THE STATE OF MONTANA

1804, Inc.,)	
)	DOCKET NO.: PT-1997-50
Appellant,)	
)	
-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 appeal came on regularly for hearing on the 4th day of August, 1998, in the City of Thompson 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. The taxpayer, represented by Curtis Cox, presented testimony in support of the appeal. The Department of Revenue (DOR), represented by Edward Thompson, appraiser, and William Haines, appraiser, presented testimony in opposition to the appeal. Testimony was presented, exhibits were received and the Board then took the appeal under advisement; and the Board having

this matter, the hearing hereon, and of the time and place of said hearing. All parties were afforded opportunity to present evidence, oral and documentary.

2. The taxpayer is the owner of the property which is the subject of this appeal and which is described as follows:

Lots 8, 17, & 18 Blk 6, Horse Plains
addition to Plains, Sanders County, Montana,
and the improvements thereon.

3. For the 1997 tax year, the DOR appraised the subject property at a value of \$22,400 for the land and \$75,700 for the improvements.

4. The taxpayer appealed to the Sanders County Tax Appeal Board requesting a reduction in value to \$3,000 for lot 8, and \$16,100 for lot 17 and 4.1 feet of lot 18 (a 1994 STAB decision), and \$37,700 for the improvements.

5. The County Board denied the appeal.

6. The taxpayer then appealed that decision to this Board.

TAXPAYER'S CONTENTIONS

The subject property is the old IGA store in Plains.

the value of the building should not have been increased. He argued that the value established in the prior State Tax Appeal Board decision recognized the problems with the building and is still the proper value since there have been no substantial changes to the property. Mr. Cox testified that he was unsure what the actual value was as a result of that decision, because it ordered a recalculation rather than an actual dollar amount.

The building was without electricity for a period of four or five months. The actual time that the business located in the building was unable to conduct its business was a couple of months according to Mr. Cox. The building has no mezzanine that the DOR had previously included in the value. There is a basement under approximately one-third of the building in the rear portion of the structure. It is used for storage, and the power shutoff is located there. The basement floods when there is a heavy rain storm. Mr. Cox stated that there is no water service in the building. There is plumbing in the building but it is not hooked up. The building is heated by electrical space heating that is merely plugged into a wall receptacle. The current renter of the building is Mr. Cox.

basement. There was no other work done to the building other than the electrical upgrade. In 1995 a facade was placed on the front of the building; however Mr. Cox believes that work had been completed by the time of the previous hearing before this Board.

Mr. Cox is aware that all property was reappraised because of the new appraisal cycle that began in 1997. He was not aware of the 1996 time frame as the valuation date of the DOR for this current appraisal cycle. He believes that there would be no difference in the cost of construction in 1996 versus what it would have cost to build a building in 1993.

DOR'S CONTENTIONS

Mr. Thompson provided the Board with the 1997 assessment for this property (Ex A) along with the property record cards.(Ex B & C)

In Mr. Thompson's opinion, the issue here is whether there was enough work performed on this building to make it open to description as "new construction" and, if so, then a new value before reappraisal (VBR) needed to be determined. That is why, in his opinion, the prior decision of the State

to begin collecting income. Mr. Thompson testified that, while there are no hard and fast guidelines for determining any number of dollars of change to apply the new construction formula, for commercial property the ability to produce an income stream has the most impact on its value. It was for this reason that the new construction formula was used to create the new VBR. It was not that there were dollars invested in the building, but the ability to occupy the building caused it to be subject to the creation of the new VBR.

Mr. Thompson stated that he has not been allowed in the basement to actually measure the amount of basement space versus the amount of crawl space, so he believes that until verified it should be ignored. He stated that the building is not in good condition and in need of work, and it always has needed work. He added that "most buildings are in better condition than the subject building."

The DOR did not have evidence of an increase in commercial land value in Plains primarily because there were insufficient vacant land sales. They did, however, notice an

cycle" and most commercial back lots were affected similarly by the valuation process. Mr. Thompson testified that, "They weren't worth less than adjacent residential land that was used for houses." The increase was not made by adding on a flat percentage for increase, according to Mr. Thompson. Land with waterfront increased in value more than land not associated with water influence, for example. He stated that the land value as established by this Board in its prior decision had nothing to do with the calculation of the current (1997) land value that was based on sales. Mr. Thompson did not present the sales that were used, although he did state that in Plains they were mostly residential tracts.

BOARD'S DISCUSSION

The highest and best use of the back lot at issue where the value was changed from the prior cycle STAB decision is probably for parking for the commercial businesses located on the commercial frontage, according to Mr. Thompson. It is apparent from the testimony of both parties that there were not enough sales of commercial property in the location of this property to determine what the market was doing. The sales

valued separately. The argument that one could place a residential structure on the commercial back lots, and hence value the land the same as residential property, seems to go against the recognition of the highest and best use as parking space for the commercial area adjacent to it. It does not seem likely that, given a choice, a person would want to build their residence in the shadow of a commercial structure. We understand the problem in establishing value where there is a lack of sales upon which to make a reasoned determination. Given the testimony that commercial values had not changed, and there seems to be enough argument to support that, there would be no reason for the value of the subject land to have been increased from this Board's determination in the prior cycle.

Mr. Thompson stated that there are not "hard and fast guidelines" when making the determination of "new construction" that would necessitate the creation of a new value before reappraisal. The new VBR is necessary so that the phase-in provisions of SB 195 might be followed. The Board understands the reason for the need to establish the new VBR where there is, in fact, new construction, destruction, or other

42.20.501 do in fact provide those guidelines. If one followed the logic of a building being closed because of a "physical incapacity" and then opened because that was remedied as being new construction, one could also use that argument for such things as road construction, business failure, emergency of some type, or a whole host of external situations that could render the building incapacitated.

The amount of work necessary here to remedy the reason the subject building was closed but not vacant does not, in the opinion of this Board, constitute new construction as described in the ARM. There is apparently no question but that the subject building needs some work. A property that is not being allowed to be used because of a jurisdictional power certainly impacts on the value from a functional standpoint.

The required input in this case most likely impacts the building from a functional standpoint, but it was hardly new construction in this Board's opinion.

The ECF is a market adjustment factor. The International Association of Assessing Officers (IAAO) states:

Market adjustment factors are often required to

condition ratings, and depreciation schedules will minimize the need for market adjustment factors. (IAAO, 1990, Property Appraisal and Assessment Administration, pages 311-312)(Emphasis applied)

Land values are not considered, because the factor is only applied to improvements valued by the cost approach.

An ECF for a neighborhood is derived from sales; but there was no evidence or testimony from the DOR to indicate the ECF applied was developed from sales of properties of the same type. In fact the testimony of Mr. Thompson was that there were limited sales to work with in this area. It follows, therefore, that the ECF ought to be removed.

It is, therefore, the opinion of this Board that the taxpayer's appeal as to the land value be granted. The appeal as to the value of the improvements shall be granted in part and denied in part. The subject improvements value shall be as calculated by the DOR after removal of the application of the economic condition factor of 103%, for which there was no support, and the removal of the determination of the new VBR as

(10) "New construction" means the construction, addition, or substitution of improvements, buildings, living areas, garages and outbuildings; or the extensive remodeling of existing improvements, buildings, living areas, garages, and outbuildings.

(13) "Value before reappraisal (VBR)" means the 1996 tax year value for any new construction or destruction that occurred in the prior year. The VBR for the 1997 tax year and subsequent years is the same as the 1996 tax year value if there is no new construction, destruction, land splits, land use changes, improvement grade changes or other changes made to the property during 1996 or subsequent tax years. (emphasis supplied)

2. 42.20.504, Administrative Rules of Montana.

(1) the following criteria will be used to identify new construction and destruction:

(a) All residential or commercial structures, outbuildings, and mobile homes that were built, remodeled, or destroyed in the preceding year;

(b) Properties with new attached garages built in the preceding year;

(c) Properties which had any land reclassification or land use changes; or

(d) Properties with outbuildings built in the preceding year.

(2) The following will not be considered new construction or destruction:

(a) Properties with square footage changes due to corrections of measurements or sketch vectoring, or due to coding corrections for story heights, such as a story with full finished attic to 1 1/2 stories;

(b) Properties with improvement grade changes;

(c) Properties with condition, desirability, utility (CDU) factor changes;

(d) Properties with changes in heat or air conditioning;

(e) Residential dwellings with changes in square footage of living area of 100 square feet or less;

(f) Properties with changes in effective year; or

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.