

BEFORE THE STATE TAX APPEAL BOARD
OF THE STATE OF MONTANA

BASIN GRAIN LLC,)
) DOCKET NO.: PT-2003-114
)
Appellant,)
) FACTUAL BACKGROUND,
) CONCLUSIONS OF LAW,
-vs-)
) ORDER and OPPORTUNITY
) FOR JUDICIAL REVIEW
THE DEPARTMENT OF REVENUE)
OF THE STATE OF MONTANA,)
)
Respondent.)

The above-entitled appeal was heard on August 17, 2004, in Stanford, 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 taxpayer, Basin Grain, LLC is a limited liability partnership of four (originally 5) area farmers. They were represented at this hearing by one of the partners, Curtis Hershberger. The Department of Revenue (DOR), was represented by Industrial Appraiser Gary Spaulding and assisted by Chuck Pankratz, Regional Manager for the DOR, and Judith Basin County Appraiser Ward Smail.

The duty of this Board is to determine the appropriate market value for the property based on a preponderance of the evidence. Testimony was taken from both the taxpayer

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

This Board modifies the decision of the Judith Basin County Tax Appeal Board and establishes a value of \$70,000 on the property for the cycle.

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 described as follows:

An 8-bin, large capacity grain elevator and associated facilities on a railroad spur located approximately 1 mile north of Stanford, Montana and within Section 8, Township 16 North, and Range 12 West in Judith Basin County. Geocode: 36-2568-08-1-01-99-0000

3. For tax year 2003, the Department of Revenue appraised the subject land and improvements at a value of \$455,943.
4. The taxpayer filed an appeal with the Judith Basin County Tax Appeal Board on January 6, 2004, requesting a value of \$70,000, stating the following reasons for appeal:

This elevator is not open for commercial grain trading business—it became obsolete

when United Harvest opened up at Mocassin. The purchase price from General Mills was \$70,000 for the entire facility.

5. In its February 24, 2004 decision, the county board reduced the DOR value of the facility by granting a greater amount of obsolescence for the rail portions of the facility but upholding the remainder of the DOR appraisal:

We felt the valuation of the trackage and spur switches was excessive. We agree with DOR that the best use of the facility was as a storage and truck load-out facility. We thus agree that the functional obsolescence of the trackage and spur switches should be 75%.

6. With the reduction ordered by the county board, the new appraised value of the land and improvements became \$380,343. The taxpayer then initiated an appeal to this Board on March 24, 2004, citing the following reason for appeal:

The elevator is no longer commercial use and is obsolete. Thus the purchase price reflects the true value.

TAXPAYER'S CONTENTIONS

Mr. Curtis Hershberger presented the testimony for the partners of Basin Grain, LLC, all of whom are local area farmers. Mr. Hershberger's testimony was fairly simple and

straight-forward: the local farmers heard that General Mills was trying to sell its facilities in Judith Basin County which included the elevator at issue here along with a seed-cleaning plant. They were primarily interested in the seed-cleaning plant because they felt that they could operate it as a profitable business, but when they entered into negotiations with General Mills they were informed that General Mills would only sell the two facilities together.

After some negotiations, the partners entered into a purchase agreement with General Mills in which they bought the seed-cleaning plant and grain elevator for a total consideration of \$140,000. They allocated the purchase price between the two facilities at \$70,000 each. The valuation of the seed-cleaning facility, which the partners continue to operate, is not at issue in this appeal.

Mr. Hershberger gave an abbreviated history of the grain elevator at Stanford. It was originally build by Cargill in the mid-80's about the time that the trackage to the towns of Geraldine and Denton was going to be closed. The expectation at that time was that grain from that area would be trucked to this new facility at Stanford which would be the closest grain elevator with rail access.

However, the State of Montana got involved and a cooperative was established to keep the rail line open. It is operated today as the Central Montana Railroad. This meant that the potential of the large grain elevator at Stanford was never realized, and Cargill eventually sold the elevator in the 1990's to General Mills.

General Mills operated the elevator but its capacity continued to be under-utilized. In approximately 2002, two events affected the Stanford elevator. One is that United Harvest built a state-of-the-art 104-car shuttle loading facility 20 miles away at Mocassin. Because of their ability to make up unit trains of 104 cars, United Harvest was able to obtain the most advantageous freight rates from Burlington Northern Santa Fe. They were able to give farmers \$.10 cents a bushel as a freight allowance and this became a significant competitive advantage to any of the area elevators, including the one at Stanford.

The second development that affected the elevator at Stanford is that General Mills made a business decision to exit the grain business. In furtherance of this decision they began to market and sell their facilities throughout Montana, including the one at Stanford. As recounted

previously, Mr. Hershberger and several Stanford-area farmers got together and negotiated with General Mills to buy their elevator and seed-cleaning business.

After obtaining ownership, according to Mr. Hershberger, the partners sought different ways to make the elevator function at a profit. One business plan they pursued was to drop the rail transportation and use the elevator as a truck-hauling facility. Despite several attempts, they were not able to come up with a plan that looked like it could be profitable.

Mr. Hershberger testified that they also approached the owner of a trucking business who owned several truck-hauling grain elevators. They offered the Stanford elevator for sale at \$70,000 but were turned down after the prospective buyer evaluated the opportunity.

At the current time, the facility is used only to store a minor amount of the owner's grain. There is no commercial activity taking place on the premises.

In closing, Mr. Hershberger said he would not quarrel with the replacement cost values which DOR has come up with. Clearly, this is a super-adequate facility that has apparently never reached its potential. But the "market

value" of the facility, used for tax purposes, is that which he and his partners negotiated with General Mills in order to buy it: the allocated amount of \$70,000.

He also made the point that Judith Basin County and the state of Montana have not lost tax revenue by virtue of the developments affecting the grain elevator at Stanford. Since the newer shuttle-loading facility in Mocassin is in the same county, it is really just a shift of tax revenue away from the older facility at Stanford to the newer facility at Mocassin.

DOR'S CONTENTIONS

Industrial Appraiser Gary Spaulding presented the bulk of the case for the Department of Revenue. Mr. Spaulding is very familiar with the Stanford grain facility and has appraised it through various changes of ownership.

Mr. Spaulding is in agreement with much of the testimony of the taxpayer. For the reasons recited by the taxpayer in his testimony, the facility has never functioned anywhere close to the capacity it was designed for by its original owners. He agrees that the Stanford grain elevator is super adequate to any conceivable

business use, and that its concrete construction, size, and railroad trackage are all superfluous to any current usage in that location. The construction of the newer, larger grain facility at Moccasin in 2002 by United Harvest, with its more advantageous rail rates, reduced the economic usefulness of the Stanford facility even further.

In recognition of these factors, Mr. Spaulding testified that his current appraisal is based on a cheaper manner of construction (corrugated steel), smaller size (half of the current facility), and as a truck load-out facility (rather than rail). (DOR's Exhibit L) In valuing the improvements at \$3.1 million on a Replacement Cost New basis for 2002, Mr. Spaulding then applied a functional obsolescence of 50% for all categories except the concrete storage bins, and he applied an 85% factor to them. This resulted in a reduction of value to \$980,804 for 2003. Next, Mr. Spaulding testified that he applied physical depreciation to all the categories of improvements, mostly of 20 to 30%, resulting in a deduction of \$374,204 for physical depreciation. Finally, Mr. Spaulding testified that he re-classified the facility

from industrial to commercial, so that a local economic adjustment factor could be applied, resulting in a further reduction of 22% due to the local economic conditions in Judith Basin County. The final improvement value of the facility, after these substantial adjustments were made, came to \$423,500. This amount is 13% of the Replacement Cost New value for the previous year of \$3.1 million dollars.

The land, based on a rate of \$.04 per square foot, comes to a value of \$32,443. Adding this to the improvement value for 2003 (as outlined in the above paragraph), results in a total valuation of \$455,943 for the facility for the 2003 tax year.

The appraisal methodology used by Mr. Spaulding is a cost approach based upon replacement cost new, less depreciation for physical deterioration, functional obsolescence, and adjustment to the local economic conditions. The other two approaches to value, namely income and comparable sales, were rejected by Mr. Spaulding as inappropriate in this instance due to a lack of sales of similar properties in the market, and the fact that the facility was not generating any business income

upon which an income approach could be based.

Mr. Spaulding did look at other sales of grain elevators (see chart on DOR Exhibit H), but found that they were sufficiently different in terms of location and current usage that the sales figures were not instructive or comparable.

There remains the figure derived from the sale of the subject property, which is the value that taxpayer has requested for valuation. Mr. Spaulding rejects the use of this sale based on his understanding of market value. In Montana law "market value" is defined in Section 15-8-111, MCA, as:

The 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 reasonable knowledge of relevant facts.

In Mr. Spaulding's view, there was compulsion on the part of the seller, General Mills, sufficient to vitiate the use of the sale for purposes of establishing market value. In Exhibit "F" Mr. Spaulding stated his position clearly:

Analysis of the September 17, 2002 sale of the subject property does not meet the terms of the definition of market value. General Mills was acting under the compulsion to sell off the remaining grain elevator terminals not desirable to Columbia Grain. General

Mills was interested in getting out of the Montana grain industry and not in continuing with this phase of their business in an effort to achieve profit. General Mills had merged with Pillsbury, Inc. and was interested in consolidating operations to the finished food market. The General Mills sale of the Stanford grain elevator and grain cleaning plant was a reversionary sale to finalize operations and eliminate property from their ownership.

BOARD'S DISCUSSION

This is an interesting case. Both parties are in agreement that the Stanford grain facility is super adequate to any conceivable business usage at its present capacity and in its established location. DOR has certainly recognized that fact and has "written down" the value of the facility by 86%; from a Replacement Cost New value in 2002 of 3.1 million dollars, to \$423,500 in 2003 (excluding land).

Montana statute directs the DOR, and this Board in reviewing DOR appraisals, to base estimates of value on market value. "Market value" is defined in Section 15-8-111 (2) (a) as

The value at which property would change hands between a willing buyer and willing seller, neither being under any compulsion to buy or sell and both having knowledge of relevant facts.

There is no question that the appraisal of a "special use" facility such as a very large, commercial grain elevator poses a challenge to all involved in the appraisal process. Since this is a fairly unique property and its location is a large determinant in its valuation, the sales-

comparison method of looking at the sale of similar properties is not available to establish a value. With no business income, the income indicator of value is likewise not available to reach an appraisal value.

The Department has chosen to use the cost approach to derive a market value, but inevitably such an approach involves a lot of conjecture. First it must establish a replacement cost new value for the facility and then depreciate for physical depreciation, functional and economic obsolescence, and then make an additional deduction for the local economic conditions.

In some instances, that may be the best indication of value that can be derived. Needless to say, appraisal of property, especially "unique" properties, is not an exact science. However, in this case, the taxpayers purchased the subject property at a period very close to the appraisal date for the new cycle.

Montana law provides that the sale of the subject property may be used as a valid indicator of value. Section 15-7-102 (3), states:

As a part of the review, the department may consider the actual selling price of the property, independent appraisals of the property, and other relevant information presented by the

taxpayer in support of the taxpayer's opinion as to the market value of the property.

As noted in DOR's arguments above, Mr. Spaulding believes that the sale between the parties is not a valid indicator of "market value" because one of the parties, General Mills, was apparently motivated by economic concerns to make the sale. We respectfully disagree.

It is always difficult to plumb the motives of parties to a market transaction. It appears that General Mills made a business decision to get out of the wholesale grain business, presumably due to issues of profitability. We do not believe that such a business decision, with nothing more to support it, amounts to the type of "compulsion" which would make the transaction not a reflection of "market value".

Presumably General Mills, a large, durable and national public corporation, under a fiduciary obligation to return profits for its shareholders, is capable of obtaining the best sale price it could get for one of its grain elevators once it had made a decision to sell. Due to all the conditions that have been recounted above, it faced a market that was not willing to put a very large price on what it had to sell. That's just the way markets work, not an

indication that there is a failure of "market value". It also does not mean that the sale is made under "compulsion".

In reviewing Montana case law there does not appear to be a judicial interpretation of "compulsion" as used in the definition of "market value". However, in contract law, there is the legal principle that a contract may be deemed invalid if one of the parties to the contract enters into it due to "economic duress". To invalidate a contract due to economic duress in Montana, the party seeking to do so must meet a fairly high standard. First, it must show that the economic duress was caused by the other party to the transaction (not some third party or general business climate) and, second, it must show that the financial pressure was so strong that it amounts to "a deprivation of free will." Stanley v. Holms, 293 Mont. 343, 355, 975 P.2nd 1242 (1999). The Stanley court also cited approvingly this language from Hoven v. First Bank (N.A.)-Billings, 244 Mont. 229, 797 mP. 2nd 397, (1990): "It is not sufficient to show that consent was secured by the pressure of financial circumstances..." Hoven, 244 Mont. At 235, 797 P.2nd at 919.

It is not necessary to the outcome of this case to determine that "compulsion" as used in the definition of

"market value" is the equivalent of "economic duress" as interpreted by the Montana Supreme Court. It is sufficient to note that there is a fairly high standard of proof required to invalidate a sale because one of the parties is "under compulsion" to make the transaction. A looser definition of "compulsion" could be used to invalidate many sales, since at some point in a consummated transaction, each party, looking to secure its own advantage, is "compelled" to make the sale.

As previously noted, this Board must comply with, *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 the 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 reasonable knowledge of relevant facts.

The taxpayer here was a party to the transaction and asserts that both parties agreed upon the price paid for the property, and, neither was under any compulsion to buy or sell. The DOR asserts that Columbia Grain was willing to sell the facility at less than market value because of a change in its business activities. Therefore, it is the DOR's opinion this transaction does not comply with the market value standard. While there may be some truth to the DOR's assertion, there was nothing presented to the Board, in the way of evidence, that suggests Columbia Grain did not

achieve market value. In addition, there is nothing restricting the DOR from contacting somebody within Columbia Grain to affirm the DOR's position. In fact, the DOR currently utilizes a verification process when validating real estate transactions. Here, we have the opinion of the DOR that the sale does not meet the definition of "market value", versus, an individual who was directly involved in the transaction who suggests it clearly was a valid market transaction. This Board must weigh the evidence as presented and make what we believe to be the best decision based upon that evidence.

In summary, in the sale of a "special use" property where other market indicators are either weak or nonexistent, the use of the acquisition price as a value indicator is not invalidated by the fact that one of the parties to the transaction is motivated to make the sale due to the general business prospects for the property which it encounters.

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CONCLUSIONS OF LAW

1. The State Tax Appeal Board has jurisdiction over this matter. §15-2-301, MCA.
2. Section 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. Section 15-8-111 MCA. Assessment - market value standard - exceptions. (2) (a) Market value is the 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 reasonable knowledge of relevant facts.
4. Section 15-7-102 MCA. Notice of classification and appraisal to owners—appeals. (3)... As a part of the review [of the DOR appraisal], the department may consider the actual selling price, independent appraisals of the property, and other relevant information presented by the taxpayer in support of the taxpayer's opinion as to the market value of the property.
5. Stanley v. Holms, 293 Mon. 343, 975 P.2nd 1242 (1999).

6. Hoven v. First Bank (N.A.)-Billings, 244 Mont. 431, 797 P. 2nd 915 (1990).

7. The appeal of the taxpayer is upheld and the value of the land and improvements of the facility known as Basin Grain in Judith Basin County shall be entered on the tax rolls at \$70,000.

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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 Judith Basin County by the local Department of Revenue office at the land and improvements value of \$70,000 for tax year 2003. The decision of the Judith Basin County Tax Appeal Board is modified accordingly.

Dated this 25th day of October, 2004.

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 25th day of October, 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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