

BEFORE THE STATE TAX APPEAL BOARD  
OF THE STATE OF MONTANA

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GREAT NORTHERN TOWN CENTER )	
OWNERS' ASSOCIATION, )	
Appellant, )	DOCKET NOS.: PT-1999-31
-vs- )	through 37
THE DEPARTMENT OF REVENUE )	FACTUAL BACKGROUND,
OF THE STATE OF MONTANA, )	CONCLUSIONS OF LAW,
Respondent. )	ORDER and OPPORTUNITY
	<u>FOR JUDICIAL REVIEW</u>

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The above-entitled appeals were heard on September 6, 2000, in the City of Helena, 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 Alan Nicholson, managing partner, presented testimony in support of the appeal. The Department of Revenue (DOR), represented by Michael C. Noble, specialist, Don Blatt, an appraiser with the Lewis and Clark County Appraisal Office and Dianne Ducello, customer assistant, presented testimony in opposition to the appeal. Testimony was presented, and exhibits were received. The Board then took the appeal under advisement; and the Board having fully considered the testimony, exhibits and all things and matters presented to it by all parties,

finds and concludes as follows:

STATEMENT OF THE ISSUE

The Great Northern Town Center is a planned unit development (P.U.D.) of approximately 11.16 acres located in Helena, Montana. The Great Northern Town Center, P.U.D., was recorded on August 14, 1998 in the office of the Clerk and Recorder for Lewis and Clark County, Montana.

Two issues form the basis for these appeals: 1) did transfer of ownership of the common areas, totaling 116,379 square feet, from the developer, Artisan LLP, to the Great Northern Town Center Owner's Association occur upon approval of the P.U.D. by the city commission and 2) do the common areas possess market value in and of themselves?

FACTUAL BACKGROUND

1. The properties which are the subject of these appeals are described as follows:

**PT-1999-31:** Land only described as common area 5 per COS 3583847, geocode 1888-30-2-14-40-0000, Great Northern PUD, and appraised by the DOR for the 1999 tax year at a value of \$13,530.

**PT-1999-32:** Land only described as common area 7 per COS 583847, geocode 1888-30-2-14-48-0000, Great Northern PUD, and appraised by the DOR for the 1999 tax year at a value of \$403.

**PT-1999-33:** Land only described as common area 6 per COS 583847, geocode 1888-30-2-14-49-0000, Great Northern

PUD, and appraised by the DOR for the 1999 tax year at a value of \$6,977.

**PT-1999-34:** Land only described as common area 4 per COS 583847, geocode 1888-30-2-14-59-0000, Great Northern PUD, and appraised by the DOR for the 1999 tax year at a value of \$13,788.

**PT-1999-35:** Land only described as common area 2 per COS 583847, geocode 1888-30-2-14-60-0000, Great Northern PUD, and appraised by the DOR for the 1999 tax year at a value of \$40,926.

**PT-1999-36:** Land only described as common area 3 per COS 583847, geocode 1888-30-2-14-85-0000, Great Northern PUD, and appraised by the DOR for the 1999 tax year at a value of \$33,647.

**PT-1999-37:** Land only described as common area 1 per COS 583847, geocode 1888-30-2-15-54-0000, Great Northern PUD, and appraised by the DOR for the 1999 tax year at a value of \$1,031.

2. The taxpayers appealed to the Lewis and Clark County Tax Appeal Board on February 28, 2000 requesting a reduction in value to zero, stating:

*The appraisal does not reflect true value, and the changes in assessments due to reappraisal have resulted in a tax which is not supported by statute. Land is in the ownership of an owner's association.*

3. In its April 14, 2000 decision, the county board denied the appeals, stating:

*The appeal is denied because the appellant is not the taxpayer of*

record.

4. The taxpayers then appealed that decision to this Board on May 2, 2000, stating:

*The appeal was based in part of the proposition that the State Dept. of Revenue has incorrectly determined that the owner is other than the Great Northern Town Center Owner's Association.*

#### TAXPAYERS' CONTENTIONS

Alan Nicholson stated that he is the managing partner for Artisan LLP, the "overwhelmingly, major interest holder in the Great Northern Town Center Owners' Association because that owners' association is made up of owners of lots in the Great Northern Town Center and Artisan owns all but three . . . of the lots."

The Great Northern Town Center was filed as a planned unit development (P.U.D.) with urban, commercial, mixed-use development. That filing consists of several elements. One element of that filing is the plat. (Taxpayers' Exhibit 2).

In the absence of a P.U.D., according to Mr. Nicholson, the plat is the only filing. A planned unit development is a zoning process by which land can be divided into lots which can be sold, certain areas can be declared to be common to all the lots, and an association can be established to govern the ownership of the lots and the common areas. The association is unable to ignore state law or city ordinance, except in the cases where the city has

allowed variances from its ordinances, which are recorded on a document which is called the P.U.D. plat (Taxpayers' Exhibit 3).

Another element of the plat filing (Taxpayers' Exhibit 4) is the designation of the common areas into 57 separate common areas. The common area designation is an integral process part because this delineation, together with the declaration which specifies the responsibilities and duties of ownership, distinguishes a P.U.D. from an ordinary subdivision.

The City of Helena passed a resolution granting a conditional use permit to allow a mixed-use residential and commercial planned unit development to be located in a B-3 district in the city of Helena, Montana, and this was what came to be the Great Northern Town Center (Taxpayers' Exhibit 8).

Paragraph number nine of this resolution concerns parkland. "The 92,483 square feet proposed as common area to be maintained by the property owners' association exceeds 11 percent of the total area included within the PUD. Therefore, the parkland requirement is waived in accordance with Section 76-3-621 (6), MCA."

According to Mr. Nicholson, the city considered the designation of the common areas to fulfill its parkland requirement, or fee in lieu thereof. "In this instance, we dedicated the common area in lieu of the fee. The city has made it explicit that the use of these common areas is for the required

accesses for the public. Pedestrian and emergency vehicles' access shall be permitted across the common area located in the northward extension of Great Northern Boulevard. These provisions for access across the common area shall be clearly stated in the covenants and on the final plat. So, this document is all precedent to this. This is simply saying what the city is going to want to see in its filing documents before it will actually accept the filing documents. Landscaping shall be installed in the common area between Blocks E, F, and G along the north side of Block G. . . it's calling out the landscaping requirements in the common areas.

So, once we negotiated this through its final form and it was signed by the mayor, then it was up to us to provide filing documents which conform to the city's requirements, which we did, and what we filed was the plat. We filed this together with all the exhibits which I've given you, which fully define the P.U.D. So, if the Department contends that this is the filing, it is not. It is only a part of the filing. The common areas that are shown on this plat are further divided into 57 common areas by the documents appended to the declaration, which is a part of the planned unit development filing. Absent all of this, you don't have a planned unit development. You have something else. The common areas exist for the benefit of the public. Obviously, we can't occupy buildings on Great Northern Boulevard if pedestrians don't have access to the buildings. That's all required in

statute; if there's not the ability of the police or fire department to access those buildings through those common areas, then we can't occupy it. So, these areas exist as an enhancement to the normal areas that are provided for public access."

Mr. Nicholson presented a legal opinion from his attorney, Gary Davis, regarding the issue of when transfer of ownership from Artisan LLP to Great Northern Owners' Association occurred (Taxpayers' Exhibit 6):

*You indicated that the Department of Revenue is taking the position that a formal deed is necessary to transfer ownership of common areas in the Great Northern to the owners' association. We do not agree.*

*The situation is analogous to the filing of a plat or survey of real property which contains public roads. By virtue of accepting and approving the plat, the governing authority transfers the roads from private to public ownership. The same thing occurs routinely with approvals of subdivision plats.*

*In the case of the Great Northern project, when the city commission approved the master plat, the streets depicted on the plats became public streets, and the common areas became the property of the owners' association. The plat is recorded with the clerk and recorder which completes the process with regard to the "chain of title." No deed conveying either the streets or the common area is necessary.*

Section 76-3-307, MCA, states: **Donations**

**or grants to public considered a grant to donee.** Every donation or grant to the public or to any person, society or corporation marked or noted on a plat is to be considered a grant to the donee.

Another attorney in the office has conferred with city attorney Dave Nielsen on this point, and he concurs.

I also attach a copy of a recent Supreme Court decision which confirms the above statute, and appears to be directly on point. . . . Montana Earth Resources Ltd. Partnership v. North Blaine Estates, Inc., a Montana Corporation; North Blaine Estates Homeowners Association, Inc, a Montana Corporation; Flathead County Treasurer; et al.,, No. 97-517., . . . . 6.

**Dedication.** Incorporated homeowners' association became legal owner of homeowners' parks in development when county issued its final approval of subdivision plat filed by developer; dedication of common areas was approved and noted on plat filed with county, and dedication of parks was made condition of final approval of subdivision development. MCA 76-3-101 et seq., 76-3-307. . . .

Mr. Nicholson argued that the plat, together with all of the association documents, constitutes the P.U.D. filing and speculates that the DOR is relying solely upon the language contained in the plat itself in its determination that Artisan LLP remains the owner of the subject common areas. Taxpayers' Exhibit 7 (The Great Northern Town Center, P.U.D. Declaration of Covenants, Conditions and Restrictions, Bylaws, Articles of Incorporation and



site plans) states: 3.02 Owners' Easements of Enjoyment in Common Areas: "Prior to the first transfer of a Lot by the Declarant to an Owner Declarant shall convey the Common Area to the Association. . ."

"Before there's a sale of a lot, those common areas are conveyed to the association. The common areas were conveyed before the sale of a lot because I can't sell a lot until the plat is filed and once we'd filed the plat the conveyance was complete. So, all of that is satisfied by this filing." (Alan Nicholson testimony, State Tax Appeal Board hearing, September 6, 2000).

Secondly, Mr. Nicholson claims the common areas have no value regardless of who owns them. This argument forms the basis for his requested valuation of zero.

"The properties have no value, for purposes of taxation, because they cannot be sold. There is no description on any filing which would allow their conveyance. If you're going to sell a property in the city of Helena, it has to be designated by a lot and a block, or by some other metes and bounds description. That is not the case here. There is no way to transfer this property by deed. . . . but, separately, you cannot convey these properties and you cannot tax them. They can't be conveyed because the association rules do not allow the association to sell them. Any property the association has has to be given up to a non-profit organization according to the articles of incorporation. Would the

city allow us to somehow convey the sidewalks and the parking areas and the access by police and fire in front of the buildings, or build on them? Of course not. These properties simply cannot be conveyed so there's no willing buyer, willing seller arm's length transaction because there can be no transaction."

In addition, most of the common areas are fairly small: 1,000 square feet, 358 square feet, 136 square feet, etc., and, thus, are not buildable lots. "You can't even maintain setbacks of any kind. In fact, there are no setbacks specified for them because they're not intended to be conveyed. In a P.U.D., whatever value there is to the common area accrues to the adjacent lots. The whole purpose of common areas is the enhancement to the value of the surrounding properties -- to provide required public access and to do it in a way which enhances the value of the lots. To say that you can tax those common areas, to say that they have some value, to say that there's some way to convey them and as though there is some potential for a willing seller and a willing buyer to consummate an arm's length transaction is just not possible. You can't build commercial or residential structures on these common areas."

Mr. Nicholson testified that Bob White, a local fee appraiser, performed an appraisal in late 1995 on the subject property. Mr. White found a value of \$200,000, or \$0.50 per square foot, on 9.2078 acres of vacant land (approximately 400,000 square

feet).

Taxpayers' Exhibit 9 is a copy of a closing statement showing that Mr. Nicholson bought the subject land for \$400,000, or \$1 per square foot, from Montana Rail Link, Inc. on July 24, 1997.

Mr. Nicholson acknowledged that the DOR's assignment of \$5 per square foot to the lots in Great Northern was reasonable in view of the improved nature of the property after his purchase: approval of the P.U.D. and the addition of streets, curbing, water, sewer, storm sewer, lighting, parking areas, or any open or common areas. He did not dispute the DOR's assigned value on the lots themselves, only upon the common areas. He acknowledges that more current sales of lots in Great Northern at \$15-\$20 per square foot reflect the presence of amenities such as sidewalks, sewer, water, curbing, gutters and the common areas. He argues that the DOR has picked up increased tax revenue through the enhancement of these lots via the common areas and is also attempting to tax him for the presence of these common areas.

The Board received an unsolicited post-hearing submission from Mr. Nicholson on September 14, 2000: the final plat for the Great Northern Town center, P.U.D., with two items circled in red: a reference to the square footage of common areas and a notation that restrictive covenants exist for the land. Mr. Nicholson's cover letter accompanying the final plat stated his belief that these two circled items represented proof that the common areas are

owned by the association and that restrictive covenants exist for the P.U.D.

DOR'S CONTENTIONS

Mr. Blatt provided the Board with the values determined by the DOR after conducting a review of the properties pursuant to the taxpayers' filing of an AB 26 form for property review:

**PT-1999-31:** Geocode 1888-30-2-14-40-0000,  
common area number 5: \$13,530.  
**PT-1999-32:** Geocode 1888-30-2-14-48-0000,  
common area number 7: \$403.  
**PT-1999-33:** Geocode 1888-30-2-14-49-0000,  
common area number 6: \$6,977.  
**PT-1999-34:** Geocode 1888-30-2-14-59-0000,  
common area number 4: \$13,788.  
**PT-1999-35:** Geocode 1888-30-2-14-60-0000,  
common area number 2: \$40,926.  
**PT-1999-36:** Geocode 1888-30-2-14-85-0000,  
common area number 3: \$33,647  
**PT-1999-37:** Geocode 1888-30-2-15-54-0000,  
common area number 1: \$1,031.

Mr. Noble stated that the DOR considers the two issues before this Board to be those of transfer of ownership and valuation. The DOR contends that ownership still resides with Artisan LLP and not with Great Northern Town Center Owners' Association. Regardless of ownership, the DOR would still value the property.

Regarding the transfer of ownership issue, the DOR argues that the plat itself doesn't show any conveyance of the common area from Artisan LLP to Great Northern Town Center Owners' Association. "What we don't see, we call it a break in title, is any deed, any

conveyance, any dedication on the plat that it is actually conveyed to the association. And that's why we keep it in the ownership of Artisan LLP because we don't see that it's actually been conveyed.

. . . if it had been dedicated or otherwise conveyed, perhaps in language like found on the plat regarding the streets to the city, then we would have accepted that as ownership." (Mike Noble testimony, State Tax Appeal Board hearing, September 6, 2000.)

In response to Mr. Nicholson's attorney, Gary Davis', statement that "Another attorney in the office has conferred with city attorney Dave Nielsen on this point, and he concurs," the DOR presented its Exhibit A. DOR Exhibit A is a copy of a September 6, 2000 electronic mail message from City Attorney Dave Nielsen, in which he stated that he ". . . cannot render any opinion that the plat does or does not convey the common area. I could not give any opinion without first reviewing the granting language on the plat and comparing it with the provisions in the Declaration of Covenants which discuss the timing for the conveyance of the common area to the association upon the first sale of the lot."

Ms. Ducello, customer assistant with the Lewis and Clark County Appraisal/Assessment Office, testified as the DOR's expert in the area of transfers of properties. In the DOR's view, a transfer of ownership occurs, for appraisal and assessment purposes, when specified on a plat or deed, accompanied by a realty transfer certificate. If she had seen a dedication on the plat or

in the P.U.D., directly dedicating the common areas to the association, she would have taken that as an indication of the conveyance of the property to the association and would have taxed the association rather than Artisan.

Pursuant to 15-4-304, MCA, all transfers are to be recorded to the DOR. The DOR is not allowed to change its records unless that transfer is evidenced by a realty transfer certificate. Ms. Ducello testified that her research on the subject common areas indicates that Artisan LLP is the owner of record for tax purposes. In accomplishing the ownership research, she "researched the deeds recorded in the clerk and recorder's office. I researched the covenants and by-laws that were recorded. I checked to see if a recorded transfer, also known as a realty transfer certificate, had been presented to our office and I didn't find any recorded conveyance from Artisan LLP to a common area owners' association. I also researched the plat and did not find any area of dedication that would transfer it to an owners' association. . . In situations where there could be a question and I can't find the documentation needed to transfer the title as per the owner's request, or per the request of the buyer, it's very common to call one or more of the local title companies and see if I have perhaps missed something or to get their opinion of what might be needed. . . I contacted both the title companies, the local companies, and it was their opinion that there was nothing recorded and that they confirmed that,

without a deed, it would be a break in the chain of title, and if they were to insure a sale, they would require a deed in order for them to insure." Her research, background and experience all indicate that the ownership of the common areas, as indicated on the plat, as well as the P.U.D., is maintained with Artisan LLP rather than with the Great Northern Town Center Owners' Association. She cited Sections 15-7-303 and 304, MCA, as authority for her opinion in this matter:

**15-7-304. Report of transfers - change of ownership records.** (1) All transfers of real property that are not evidenced by a recorded document, except those transfers otherwise provided for in this part, must be reported to the department of the form prescribed.

(2) The department is not required to change any ownership records used for the assessment or taxation of real property unless the department has received a transfer certificate from the clerk and recorder and the transfer has been reported to the department as provided by rule. If the grantor on the transfer certificate is not the person to whom the property is assessed on the property tax record, the department may not substitute the grantee's name on record, but the department shall add the grantee's name to the property tax record with the name of the person to whom the property is assessed. The department shall mail notification of the change to the person to whom the property is assessed and to the grantee. The department shall substitute the grantee's name on the property tax record when reliable evidence demonstrates that the grantee is

*the owner of the property for tax purposes.*

Ms. Ducello advised Mr. Nicholson to write a deed from Artisan LLP to the Great Northern Town Center Owners' Association and file with that a realty transfer certificate. "It's a \$6 operation and that would take care of everything."

Mr. Noble asked the Board to take administrative notice of Section 15-8-512, MCA:

***15-8-512. Common elements serving residential or commercial development.***

*(1) Each lot in a residential or commercial development, regardless of whether improved or unimproved, is considered a parcel of real property subject to separate assessment and taxation. Each lot owner is assessed on a pro rata basis for elements of the development serving the lots in common, such as recreational areas, pathways, sidewalks, private roads, street lights, main communication cables, main gas or electric lines, community water and sewer systems, or any other common element enumerated in 15-8-511, but not for park areas that serve the lots.*

The preceding statute empowers the DOR to assess the subject common areas, according to Mr. Noble.

Mr. Blatt testified that he was responsible for establishing the land values, for ad valorem tax purposes, in the Great Northern Town Center development. For the 1996 appraisal cycle, he placed a value of \$5 per square foot on the lots and the common areas in Great Northern; a value similar to those placed



upon other downtown lots.

Through the AB 26 process for property review, Mr. Blatt reduced the value of the common areas to 10 or 20 percent of the original value in recognition of the diminished sizes, the restrictions placed upon their usage and their irregular shapes. The smaller common areas received a reduction to ten percent of the original value. The majority of these areas received a 20 percent adjustment. Thus, the bulk of the subject land is valued at \$1 per square foot. Mr. Blatt testified that he arrived at the percentage reduction through "conversations with Jim Fairbanks. He offered me his opinion as to what to do with this common area. It was impressed upon me to put a nominal value on there." Jim Fairbanks is the Region 4 supervisor for the DOR, based in Missoula County.

Mr. Blatt countered the taxpayer's argument that the common areas have no value. He argued that the governing documents allow some construction on the larger parcels, placement of signage, parking and placement of outdoor eating vendors and educational forums. These are uses which could generate an income stream to the affected common areas.

Mr. Blatt introduced evidence concerning three sales which he testified have occurred within the Great Northern area (DOR Exhibit I, a portion of a plat map pertaining to this area):

Sale number one, a parcel containing 12,109 square feet, occurred in September of 1998 and sold for approximately \$192,224, or \$15.99 per square foot.

Sale number two, a parcel containing 7,573 square feet, occurred in September of 1998, for \$118,540, or \$15.65 per square foot.

Sale number three, a parcel containing 11,610 square feet, occurred in October of 1998, for \$232,200, or \$20 per square foot.

Mr. Blatt stated that these sales were not used in the valuation of the subject land, but he considers these sales to be indicative of more current market values.

Mr. Blatt stated that the original value of \$5 per square foot was "based, essentially, on values we set in the downtown area. . . by that, I mean Last Chance Gulch and the walking mall, and there have been no sales for a number, number, number of years and so that land value was developed consulting with local fee appraisers, reviewing other areas in town that are similar . . . I do not have a spread of sales in the downtown area because no sales have occurred. . . It's my professional opinion that I placed \$5 a square foot." The DOR testimony was that the original \$5 per square foot was not obtained through a CALP (computer-assisted land pricing) analysis. Upon further questioning, Mr. Blatt stated that an appraiser by the name of Bob White told him that he had placed a value of \$7 per square foot upon land on the walking mall in downtown Helena. Mr. Blatt's \$5 per square foot was based upon the Bob White conversation and upon "professional judgment."

Regarding the P.U.D. for Great Northern, Mr. Blatt presented five arguments (DOR Exhibit K):

- 1) 1.11 indicates the common area will be transferred at the time of the first sale of any lot. Why would this language be included if the attached plat was intended to transfer the property?
- 2) 3.02 indicates the common area can be increased or decreased, and allows for use of the common areas for commercial purposes. Why would this language be included if the land was never intended for commercial use?
- 3) 6.01 indicates the common area can be used for commercial purposes, i.e., signage and transit stops. Normally this use would generate income for the use of the land, are we to believe this income stream is for land that has no value?
- 4) 11.01 indicates the Association will represent the owners in the case of condemnation and any settlement that may be received. Does this not indicate that in the event of condemnation the Association would expect compensation for lost common area?
- 5) 14.05 indicates the future annexation of property would include the requirement of "clear title" to any common area. What would impede the Association from the sale of this property?

#### BOARD DISCUSSION

Regarding the issue of transfer of ownership, the Board finds in favor of the DOR. There is nothing in the record before this Board to indicate that Artisan LLP transferred ownership of the common areas to the Great Northern Town Center Owners' Association. There is a reference to dedication of the streets to

the city of Helena: ". . . the land included in all streets shown on this plat are hereby granted and donated to the use of the public forever." (final plat for Great Northern Town Center, P.U.D.) Evidence of transfer is lacking in all of the documentation presented by Mr. Nicholson (Taxpayers' Exhibits 2, 3, 4, 5, 6 and 7) in support of his argument regarding transfer of ownership. It is apparent that Artisan LLP intended to transfer its ownership of common areas to Great Northern, but it did not happen, in this Board's view. Mr. Nicholson's attorney, Gary Davis, offered Section 76-3-307, MCA, in support of the argument that "the plat filing completes the process with regard to chain of title." This section provides that "Every donation or grant to the public or to any person, society or corporation marked or noted on a plat is to be considered a grant to the donee." (Emphasis supplied.) According to this statute, there must be a reference to the specific donation or grant on a plat to denote conveyance. No such reference exists in the record before this Board.

Ms. Ducello advised Mr. Nicholson to write a deed from Artisan LLP to the Great Northern Town Center Owners' Association and to file with that a realty transfer certificate in order to complete the chain of title. In this Board's view, this is the procedure which must occur to complete the process intended by Artisan LLP regarding ownership of common areas.

When the above process has been completed, Section 15-8-

512, MCA, will govern the assessment of the common areas:

*Each lot in a residential or commercial development, regardless of whether improved or unimproved, is considered a parcel of real property subject to separate assessment and taxation. Each lot owner is assessed on a pro rata basis for elements of the development serving the lots in common, such as recreational areas, pathways, sidewalks, private roads, street lights, main communication cables, main gas or electric lines, community water and sewer systems, or any other common element enumerated in 15-8-511, but not for park areas that serve the lots."*

According to the above statute, the DOR will then assess each lot owner on a pro rata basis for the common elements of development.

Regarding the valuation issue, the Board partially finds in favor of the DOR. While the original \$5 per square foot value and the percentage adjustments for size and shape may not be based upon sound appraisal principles, they are the best evidence of market value in the record before this Board. Mr. Noble testified that "Don (Blatt) has placed, in his judgment, a nominal value on that piece of common area. . . We can't change it at this point. As bad as it may seem, we can't do that in the middle of the cycle." While the Board finds frustrating the lack of substantial and credible evidence in the form of sales data, appraiser's field notes, or **anything** more concrete than hearsay evidence about six-

year-old conversations with private fee appraisers or reliance upon "professional opinions", the Board will uphold the DOR values. However, regardless of size, shape, etc., the purpose of the common areas is consistent throughout the P.U.D. Therefore, the Board sees no reason for a percentage value difference and will order that all of the common areas be valued at 10 percent of the DOR's original appraised value of \$5 per square foot.

The Board does not agree with Mr. Nicholson's argument that the subject common areas have no market value. All value starts with land. *"Land is durable. The supply of land is finite. (The supply of people usually increases.) Therefore, land is useful to people and has value."* The Appraisal of Real Estate, Eleventh Edition. While it is true that the common areas do enhance the value of surrounding lots through the amenities they provide, it does not also follow that their market value is zero. There are a multitude of commercial uses to which the common areas can be put, many of which can be found in the Taxpayer's Exhibit 7, (The Great Northern Town Center, P.U.D. Declaration of Covenants, Conditions and Restrictions, Bylaws, Articles of Incorporation and site plans), such as signage, transit stops, outdoor food vendors, etc. It is also likely the Artisan LLP would be not be very successful in selling its lots in Great Northern without these common areas. Thus, the taxpayer has not satisfactorily demonstrated that these areas are completely without market value.

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 15-2-301, 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. The appeals of the taxpayers are hereby granted in part and denied in part and the decisions of the Lewis and Clark County Tax Appeal Board are modified.

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 Lewis and Clark County by the local Department of Revenue appraisal office at the 1999 tax year values reflecting ten percent of the original DOR appraised values, as determined by this Board, and consistent with the determination the ownership of the subject common areas resides with Artisan LLP.

Dated this 4<sup>th</sup> of October, 2000.

BY ORDER OF THE  
STATE TAX APPEAL BOARD

\_\_\_\_\_  
GREGORY A. THORNQUIST, Chairman

( S E A L )

\_\_\_\_\_  
JAN BROWN, Member

\_\_\_\_\_  
JERE ANN 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 4th 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:

Alan Nicholson  
P.O. Box 472  
Helena, Montana 59624

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

Appraisal Office  
Lewis and Clark County  
City-County Building  
316 North Park Avenue  
Helena, Montana 59623

Gene Huntington  
Lewis and Clark County Tax Appeal Board  
725 North Warren  
Helena, Montana 59601

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DONNA EUBANK  
Paralegal