

BEFORE THE STATE TAX APPEAL BOARD
OF THE STATE OF MONTANA

Helena First, Inc.,)	DOCKET NO.: PT-1997-133
)	
Appellant,)	
)	
-vs-)	
)	
THE DEPARTMENT OF REVENUE)	<u>OPINION and ORDER</u>
OF THE STATE OF MONTANA,)	
)	
Respondent.)	

The above-entitled appeal came on regularly for hearing on the 6th day of April, 1999, in the City of Helena, Montana. Neither the taxpayer, nor an agent for the taxpayer, appeared at the scheduled hearing. The Department of Revenue (DOR), represented by Appraisers Don Blatt, Nancy Hallett and Florian Tininenko, presented testimony in support of the DOR appraisal.

The subject property involved in this appeal is described as follows:

Parcels 84 and 86, with a Geo Code of 1888-30-3-03-11-0000, Helena Townsite, City of Helena, County of Lewis and Clark, State of Montana, and the improvements located thereon.
(Department of Revenue Assessor's Code: 2835.)

FINDINGS OF FACT

For the 1997 tax year, the DOR appraised the subject

property at a value of \$212,485 for the land and \$2,321,800 for the improvements. The taxpayer appealed to the Lewis and Clark County Tax Appeal Board requesting a reduction in value to \$121,420 for the land and \$1,863,180 for the improvements, stating "Findings and values were arrived at during our previous appeals. Please consult STAB rulings Appeals #PT-1993-1082, 1083, 1084." The County Board denied the appeal, stating "valuation is fair and equitable." The taxpayer then appealed that decision to this Board, stating "Findings and values were arrived at during previous appeals. Fair values were not set functional and economic obsolescence of the property."

This Board is faced with weighing the evidence and testimony in the record to determine the fair market value of the subject property.

DOR'S CONTENTIONS

Mr. Blatt submitted the Department of Revenue's Exhibit A, an eleven-page document consisting of:

- (1) A copy of the taxpayer's appeal form, signed by the taxpayer;
- (2) A copy of the taxpayer's AB-26 form, which indicated that an adjustment in value had been made;
- (3) A copy of the Department of Revenue's computer screen showing the breakdown of the land and improvement values before the adjustments had been made, indicating a total value of \$3,004,885;
- (4) A copy of the Department of Revenue's computer screen showing the breakdown of the land and improvement values after the adjustments had been made, indicating a total value of \$2,534,285;
- (5) A copy of the front side of the Department of Revenue's hand-written subject data collection card;
- (6) A copy of the back side of the subject data collection card, which included the following notation by Mr. Blatt: "97 AB-26 - full internal inspection. There has been no ongoing upgrades of

this hotel since I was there in '93 - most rooms need carpet & paint. Hallways need carpet & paint. Owner says approx. \$600,000 to get franchise approval.";

- (7) A diagram of the subject property, showing the improvements;
- (8) A copy of the front page of the Department of Revenue's computer-generated subject property record card prior to the AB-26 adjustments;
- (9) A copy of the back page of the computer-generated property record card prior to the AB-26 adjustments;
- (10) A copy of the Department of Revenue's computer screen showing the value of the improvements after the AB-26 adjustments had been made; and
- (11) A copy of the Department of Revenue's computer screen showing the value of the land after the AB-26 adjustments had been made.

The Department of Revenue's Exhibit B is a photograph of the subject property. Exhibit C is a copy of a map of the area in which the subject property is located, color-coded to illustrate land values in that area.

The 1994 STAB decision (PT-1993-1084) provided the following background information on the seven-story, 71-room Park Plaza Hotel, the subject property, which was completed in 1972:

"In 1981, the City of Helena approved the sale of \$3.5 million worth of bonds to help finance the hotel's expansion. The expansion plans were abandoned when the owner at that time, Eric Myhre, failed to obtain additional financing for the project.

DeTienne Associates contracted to purchase the hotel in 1984 and completed its financial obligations to Helena First, a group of downtown business people who constructed the hotel during Helena's downtown renewal in the early 1970's.

The Park Plaza Hotel was renovated in 1990. The objective of the renovation was to address obsolescence in the convention

area of the hotel and also in the hopes of capturing a new market with the addition of a nightclub. In addition to the nightclub, a new lounge area and conference rooms were added. The renovation included the addition of 5,430 square feet..."

The 1994 STAB decision also referenced the issue of functional obsolescence, which is one of the reasons for the current appeal, as follows: *"Speaking to the functional obsolescence, Mr. DeTienne stated that the Park Plaza would not be built today the way it was in 1972 (the type of construction and the size of the banquet rooms, common area, and kitchen). At that time, it was intended only to be part one of a two phase project.*

Mr. DeTienne stated that his review of these hotel properties convinced him that the functional obsolescence existing at the time of the 1986 tax appeal exists today. The Park Plaza elevator system is an example of the functional obsolescence experienced by the hotel. Because the original concept involved a much larger facility than actually came to be, there are two elevator systems. One elevator system would suffice for the current operation...

Further, Mr. DeTienne stated that the hotel does not have insulation in the walls and has 8' by 8' sliding glass doors that allow a significant amount of heat loss..."

During the County Tax Appeal Board hearing, held on March

13, 1998, Mr. DeTienne presented the following information in support of his appeal:

"The Park Plaza in its current condition I think fits the description of economic and functional obsolescence to the "t". The facility hasn't been remodeled in 7-8 years. Last time was in 1991. Some of the beds at 10 years old are at their life cycle. Everything pretty much needs to be refurbished. A hotel cycle is usually 5-6 years in a cycle for remodel and stuff like that to be competitive in its market.

We're located in a downtown business district so we cater to the business clientele and if we don't renovate, and we have plans to renovate, that it's not targeting the market that it was intended to be... There has been a decline in sales for the last three years at the peak of its cycle."

The Appraisal of Real Estate, 11th edition, page 365, provides the following definitions:

Functional obsolescence is caused by a flaw in the structure, materials, or design that diminishes the function, utility and value of the improvement.

External obsolescence is an impairment of the utility or salability of an improvement or property due to negative influences outside the property. External obsolescence may result from adverse market conditions. Because of fixed location, real estate is subject to external influences that cannot be controlled by the property owner, landlord, or tenant.

Physical deterioration refers to wear and tear from regular use and the impact of the elements. The common perception in the market is that a new structure is better than an old one."

The above statements go more to the physical depreciation of the structure. There is nothing in the record to indicate to the Board that the Department of Revenue has not adequately assigned

the proper amount of depreciation.

Mr. Blatt testified that he had requested income and expense information on the subject property "multiple times" but had never received it. He stated that if he could have been provided with such information as the average daily room rate and the occupancy rate, he could have attempted to do an income approach to valuing the property, but he was denied this information.

During the Lewis and Clark County Tax Appeal Board hearing, Mr. Blatt had testified, *"I have never successfully got income information from the Park Plaza. Back in '93 we requested really hard for that information. For I think privacy reasons mainly, it was not provided to us... I do have an income model that is set up on the computer that is based on some returns I received from here in Helena, but this is such a unique property I didn't even run it through that income model that I have on the computer."*

Mr. Blatt explained his current valuation of the subject property as follows: *"Essentially I have everything as it was last cycle. The Department of Revenue updated its cost tables to the new cycle. I made no changes to that appraisal. That appraisal was mailed out to the owner. They did their AB 26. I did my walk-through, and based on the fact that they had no ongoing maintenance program, I did make a very substantial reduction of \$470,600. That essentially was a removal of the effective age."*

Mr. Blatt further explained that the Park Plaza Hotel was built in 1971. In 1990 a building permit for \$849,500 was issued. During the 1993 AB-26 review, the effective age of the building was changed from 1971 to 1976 due to this remodeling. After his 1997 walk-through, Mr. Blatt reduced the effective age to 1971.

Mr. Blatt stated, *"I also reduced the physical and functional condition on each and every floor of that building including the basement, based on my observation that they had no ongoing carpet or painting replacement going on."*

Referring to Department of Revenue Exhibit A, page 9, Mr. Blatt pointed out that the subject property was designated as 76% good, or 24% depreciation. He testified, *"I felt, based on my observations and my internal inspection, that there was indeed more depreciation than that. And based on my changes to go back to 1971 as the effective age and also adjust the physical and functional, go to the second to last sheet of this computer-generated screen print of what's on the computer (Exhibit A, page 10), you'll see that ... the percent good has gone down to 67% good ... so the effect of removing the effective age and lowering the physical and the functional took it from 76% good to 67% good, and that's based on my internal inspection that I felt more depreciation was needed on this property."*

The subject land consists of 30,355 square feet valued at \$7.00 a square foot for a total value of \$212,485. During the

previous appraisal cycle, which began in 1992 and was implemented in 1993, the subject land was valued at \$4.00 a square foot for a total value of \$121,420. The taxpayer did not appeal that value.

Mr. Blatt explained that in 1997, when the new values were implemented, the Department of Revenue updated every parcel of land in Lewis and Clark County with the new values. He stated that there are no vacant lots in the downtown area and there have been no vacant land sales downtown for the past two reappraisal cycles. He had discussed with several private fee appraisers, including Mr. C. Robert White, M.A.I., the value they were using for downtown lots. Mr. White had completed an appraisal on the Medical Arts building, located near the subject property, close to the subject property's appraisal date of January 1, 1996. Mr. White had used \$7.00 a square foot for the value of this property.

Mr. Blatt pointed out the areas on the map (Exhibit C) that were color-coded green to delineate land valued at \$7.00 a square foot. He had also discussed these values with private fee appraisers at the time the values were determined.

Mr. Blatt testified that the difference between the \$7.00 a square foot value of the subject property and the \$5.00 a square foot value for the Park Plaza parking lot (subject of appeal PT-1997-132) is because of the hotel's location on the walking mall. He stated, *"Property that's on the walking mall, in my opinion, is more desirable than some that's not on the walking mall. The*

frontage being on the walking mall versus the frontage of being on part of Park is more desirable. And it's based on my opinion and based on discussions with taxpayers and also on verified sales."

Mr. Blatt explained that another means of valuing land is the "land residual technique". If an improved property sells, the appraiser may remove the value of the improvements from the sale price, and the remaining value would then be attributable to the land. This value is then divided by the square footage of the property, resulting in the value per square foot. The example Mr. Blatt cited was the Loranz Building, located on the downtown walking mall, near the subject property. This property sold in January of 1994 for \$135,000. Using the land residual technique, with no time adjustment, the improvements as valued by the Department of Revenue at \$107,599 were subtracted from the sale price of \$135,000, resulting in a land value of \$27,401. If this amount is divided by 3,143 square feet (the size of the property), the resulting value is \$8.72 per square foot for that property.

In explaining how the value of the subject land was determined, Mr. Blatt stated that "my discussion with fee appraisers carried the most weight in setting the value."

Mr. Blatt's post-hearing submission, as requested by the State Tax Appeal Board to further support his determination of the land value, was received by the Board on April 21, 1999. This document consists of the following: (1) a cover letter from Mr.

Blatt, requesting confidentiality for the comparable sales information provided; (2) a copy of **15-7-308, MCA. Disclosure of information restricted...**; (3) a letter from C. Robert White, M.A.I. with the following attachments: a map of the area in which the subject property is located; and a land sale summary with a six-page analysis, prepared by Mr. White.

In Mr. White's letter to Mr. Blatt, dated April 7, 1999, he states: "CBD (central business district) land value is very difficult to nail down. We simply have no recent arms length comparables... Now if the old Helena CBD were falling into disrepair like Great Falls, land values would fall regardless of zoning. What viable business wants to locate in a deteriorating neighborhood? But Helena's CBD, beginning with the 1970 urban renewal has experienced continued up-grading from 6th Avenue South to the Federal Building..."

Mr. White cites the following land values in his cover letter: "There is land listed near the new Napa Auto Parts at **\$7.00** per sq. ft. B-3 zoning with its higher density and lack of on site parking requirements should carry higher value than B-2, other factors being equal. The Great Northern area is at **\$16.00 to \$20.00** per sq. ft. And Nicholson said he will go to **\$25.00** per sq. ft. soon. I think the land along Front Street between Niell (sic) and 16th is worth **\$8.00** per sq. ft. If there were a privately owned vacant site between Niell (sic) Avenue and the Federal Building,

with no adverse factors, 10,000 to 20,000 sq. ft. in size, I would not be surprised if it brought **\$10.00 to \$12.00** per sq. ft."

Because of the request for confidentiality, the land sales data provided by Mr. White can only be summarized here. This information had been used to help Mr. White determine the value of a downtown property he was appraising in January of 1996. It included data on six sales in or near the downtown area with sales dates between 8/83 and 1/96. Prices per square foot ranged from a low of **\$4.46** to a high of **\$8.60**, with a mean of **\$6.31**. Adjusted prices per square foot ranged from a low of **\$6.55** to a high of **\$6.88**, with an adjusted mean of **\$6.72**.

Other sales data presented by Mr. White included three outlying commercial strip sales between 4/91 and 12/93. Prices ranged from a low of **\$7.60** per square foot to a high of **\$8.90** per square foot, with adjusted prices of **\$7.05** to **\$7.39** and an adjusted mean of **\$7.18**.

Historic sales in the downtown area provided by Mr. White included five sales between 1/60 and 11/81. Prices per square foot ranged from a low of **\$2.37** to a high of **\$7.46**. Excluding the 1960 sale at **\$2.37** per square foot, the unadjusted mean of the four sales between 1978 and 1981 was **\$6.70** per square foot. Mr. White had determined the value of the property he was appraising in 1/96 to be **\$7.00** per square foot.

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).

It is difficult for this Board to adjust the value when the taxpayer fails to appear to present testimony and respond to questions. *"We note that in those occasional situations when, due to the inherent imperfections in the Department's market-based method, fair, accurate, and consistent valuations are not achieved, individual taxpayers can and should avail themselves of the property tax appeals process set forth at **15-15-101, -102, -103, and -104, MCA.**"* (Albright v. Department of Revenue, 281 Mont. 196.)

This Board finds that the evidence presented by the Department of Revenue did support the values assessed to the land and improvements.

The appeal of the taxpayer is hereby denied and the decision of the Lewis and Clark County Tax Appeal Board is affirmed.

//
//
//
//
//

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 Assessor of said County at the value of \$212,485 for the land and \$2,321,800 for the improvements as determined by the Department of Revenue and upheld by the Lewis and Clark County Tax Appeal Board.

The appeal of the taxpayer is therefore denied and the decision of the Lewis and Clark County Tax Appeal Board is affirmed.

DATED this 1st day of June, 1999.

BY ORDER OF THE
STATE TAX APPEAL BOARD

GREGORY A. THORNQUIST, Chairman

(S E A L)

JAN BROWN, Member

JEREANN 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 1st day of June, 1999, 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:

Kevin DeTienne
22 North Last Chance Gulch
Helena, MT 59601

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

DONNA EUBANK
Paralegal