

BEFORE THE STATE TAX APPEAL BOARD

OF THE STATE OF MONTANA

THE DEPARTMENT OF REVENUE,)	
OF THE STATE OF MONTANA,)	
Appellant,)	DOCKET NO.: PT-1997-97
-vs-)	
BRIAN MCCULLOUGH,)	FINDINGS OF FACT,
Respondent.)	CONCLUSIONS OF LAW,
)	ORDER and OPPORTUNITY
)	<u>FOR JUDICIAL REVIEW</u>

The above-entitled appeal was heard on the 22nd day of April, 1998, in the City of Helena, 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 given as required by law. The Department of Revenue (DOR), represented by appraiser Don Blatt, presented testimony in support of the appeal. The taxpayer, Brian McCoullough, 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 fully considered the testimony, exhibits and all things and matters presented to it by all parties, finds and concludes as follows:

FINDINGS OF FACT

1. Due, proper and sufficient notice was given of this matter and of the time and place of the 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 13 & 14, Blk 6, C.W. Cannon Addition,
Helena, Lewis & Clark County, MT. Land
only. Assessor # - 5073.

3. For the 1997 tax year, the DOR appraised the subject property at a value of \$42,000.

4. The taxpayer filed an AB-26 Property Adjustment Form with the DOR on September 26, 1997, stating:

The land value of both properties have been increased to \$42,000. I believe about \$30,000 is more accurate to market value of residential values. I believe these have been valued as commercial in error.

5. The DOR denied adjusting the value on the AB-26 Form on December 1, 1997, stating:

After review, I felt appraisal was a fair market value.

6. The taxpayer appealed to the Lewis & Clark County Tax Appeal Board requesting a reduction in value for the land to \$30,000 on December 29, 1997, stating:

4 plex is being appraised as commercial rather than residential.

7. The County Board granted the appeal on February 6, 1998, stating:

Board approved because of usage of Land Roll Back Clause.

8. The DOR then appealed that decision to this Board on February 13, 1998, stating:

The nature of the proof adduced at the hearing was insufficient from a factual and a legal standpoint, to support the Board's decision.

DOR CONTENTIONS

1. The DOR argues the local board erred in its decision to of apply the provisions of appraisal of residential property in areas of changing use. This property is not the principle residence of the taxpayer.

15-7-401 MCA. The legislature finds that the rapid commercial and industrial growth in many Montana cities and towns is engulfing homes. Owners of these homes are often forced to pay higher property taxes upon these homes because their property is appraised on its industrial or commercial use. The legislature intends that houses and lots in these areas of changing use shall be appraised on their value as residential property.

15-7-402 MCA. Application for residential appraisal of certain land and improvements. (1) Any person wishing to ensure that the person's residential land and improvements are appraised as residential may file a signed application with the department.

(2) In the application, the owner shall:

(a) assert that the property is used only for human habitation and is the principal residence of the owner;

(b) sign a statement pledging that the property will continue to be used as residential property; and

(c) show that the statement has been filed with the county clerk and recorder of the county in which the property is located.

(3) When the department has approved an application for residential use, the department and its agents shall consider only those indicia of value that the property has for residential use.

(4) Failure to file an application under this section may not result in reclassification on real property unless there has been an actual change in use.

2. The city zoning for the subject site is identified as R-3, Medium Density Residential. The permitted uses for this district allow for multi-family dwellings. (exhibits A & B)

INTENT: This District is intended to provide for the development of multi-family structures and service facilities. It is further intended to provide for changing patterns of residential area where facilities can be provided to serve them and for a variety of housing facilities to serve the varied needs of families of different sizes, including the young and the elderly, while reducing the adverse effects of nonresidential uses.

3. Adjacent zoning to subject is R-2, Single Family Residential. (exhibit B)

INTENT: This District is intended to provide for newly constructed single-family development and further, for neighborhood facilities as conditional uses to serve such development while preserving the residential nature and quality of the area.

4. The DOR contends that land within an R-3 zoning classification sustains a higher value on a price per square foot (SF) than land within an R-2 zoning classification.

5. Mr. Blatt testified the R-2 zoning

classification within the vicinity of the subject property has a base rate of \$2.55 SF for the first 10,800 SF and \$1.55 SF for any excess land. The subject property is valued at \$3.00 per square foot.

6. Mr. Blatt testified there were no sales to support \$3.00 per square foot. The \$3.00 was based on the appraiser's opinion. His opinion of value was developed from sales of property along Montana Avenue which sold in the area of \$5.00 SF.

7. Mr. Blatt testified that there is not a base lot size determination for the property within the R-3 zoning classification in the subject neighborhood; therefore, no adjustment is recognized for any excess land.

8. State's exhibit B, page 6, states in summary:

11-6-3 LOT AREA AND WIDTH: The lot area and width, for uses in this district, shall be as follows:

A. For each residential use, there shall be at least three thousand (3,000) square feet of lot area for each dwelling unit if two or more...(emphasis added)

TAXPAYER'S CONTENTIONS

1. Mr. McCullough argues the DOR's land value determination for the subject property, zoned R-3, is valued at a higher price per square foot than that for comparable properties located across the alley or within the immediate

vicinity. These comparable properties are zoned R-2 and have the same use as the subject property.

2. In valuing the property based on the use, equalization has not been provided by the DOR when comparing the subject at \$3.00 SF to the multi-family property across the alley at \$2.55 SF for the first 10,800 SF and \$1.55 SF for any excess land.

3. Mr. McCullough testified that a competing property should not have a business advantage due to a difference in zoning classification.

4. Mr. McCullough testified the subject property is residential rental as opposed to a commercial property because of its use.

DISCUSSION

The issues before the Board are whether the subject property qualifies for the [changing use] provisions as defined in 15-7-401 & 15-7-402, MCA and to determine the correct valuation of the subject site.

The property provides residential occupancy for the tenants but is an income producing property for the owner; therefore, it is a commercial property.

15-1-101, MCA. Definitions. (1) Except as otherwise specifically provided, when terms mentioned in this

section are used in connection with taxation, they are defined in the following manner:

(d)(I) The term "commercial", when used to describe property, means property used or owned by a business, a trade, or a corporation as defined in 35-2-114 or used for the production of income, except property described in (1)(d)(ii). (emphasis added)

ARM, 42.20.104 (2) The term single family residence with ancillary improvements is defined as:

(a) A structure originally constructed or converted for use and occupancy by a single family unit and whose primary use is currently one of occupancy by a single family unit. (emphasis added)

Based on the evidence and testimony of both parties, the subject property is not the principal residence of the taxpayer.

15-7-402, MCA (2) In the application, the owner shall:

(a) assert that the property is used only for human habitation and is the principal residence of the owner.

(emphasis added)

The DOR stated the \$3.00 SF was determined from the consideration of commercial land sales along Montana Avenue.

Mr. Blatt stated the sale prices were in the area of \$5.00 SF.

It was his opinion that \$3.00 SF was appropriate for the subject property which is zoned R-3. The property zoned R-2 permitted uses are more restrictive than the subject's R-3 zoning classification. The DOR has valued the R-2 property at \$2.55 SF for the first 10,800 SF and \$1.55 SF for any excess

land.

In the valuation of land, zoning is one of the primary determinants of the highest and best use of the property, because it acts as the test of legal permissibility. The DOR has made a proper attempt to address the impact of the zoning regulations in valuing the subject site.

The highest and best use analysis is one step in the appraisal process. It also must be considered in the selection of comparables. The 1997 Montana Appraisal Manual, Land Valuation Techniques, 2-13, states in summary:

- Real estate is valued in terms of its highest and best use. The highest and best use of the land (or site), if vacant and available for use, may be different from the highest and best use of the improved property.

The taxpayer contends that the multi-family property located across the alley has an advantage over his property with a lower land value.

□...And in no proceeding is one to be heard who complains of a valuation which, however erroneous it may be, charges him only with a just proportion of the tax. If his own assessment is not out of proportion, as compared with valuations generally on the same roll, it is immaterial that

some one neighbor is assessed to little; and another too much.[]

State ex rel. Schoonover v. Stewart, 89 Mont. 257 (1931)

CONCLUSIONS OF LAW

1. The State Tax Appeal Board has jurisdiction over this matter. []15-2-302 MCA

2. Appraisal of residential property in areas of changing use. []15-7-401 & 402 MCA

3. *State ex rel. Schoonover v. Stewart*, 89 Mont. 257 (1931)

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ORDER

IT IS THEREFORE ORDERED by the State Tax Appeal Board of the State of Montana that this appeal be granted in part and denied in part. The subject property[]s land shall be valued at \$3.00 SF for the first 12,000 SF and \$1.55 SF for the remaining 2,000 SF. The land is valued at \$39,100 and shall be entered on the tax rolls of Lewis & Clark County by the assessor of that county for the 1997 tax year. The decision of the Lewis & Clark County Tax Appeal Board is therefore modified.

Dated this 8th of May, 1998.

BY ORDER OF THE
STATE TAX APPEAL BOARD

PATRICK E. MCKELVEY, Chairman

(S E A L)

GREGORY A. THORNQUIST, Member

LINDA L. VAUGHEY, 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.