

BEFORE THE STATE TAX APPEAL BOARD
OF THE STATE OF MONTANA

MOUNTAIN STATES LEASING)	
)	DOCKET NO.: PT 1997-25
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 was heard on the 29th day of June, 1998, in the City of Deer Lodge, 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 taxpayer, represented by Wayne Paffhausen, presented testimony in support of the appeal. The Department of Revenue (DOR), represented by appraiser William Bandy, presented testimony in opposition to the appeal. Testimony was presented, exhibits were received, and a schedule was established for a post-hearing submission from the DOR and a response from the taxpayer. A timely submission was received from the DOR; a response was not received from the taxpayer.

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 the opportunity to present evidence, oral and documentary.

2. The property involved in this appeal is described as follows:

Plat 61 B, Parcel D, 2.212 Acres, Section 28, Township 8 North, Range 9 West, County of Powell, State of Montana, Land and Improvements. (Assessor's Code: 0000216250)

3. For the 1997 tax year, the DOR appraised the subject property at a value of \$92,178 for the land and \$351,200 for the improvements.

4. The taxpayer filed an AB-26 Property Adjustment Form on September 5, 1997 stating:

The reassessed (sic) value (1996-\$318,534) to (1997-\$443,378) represents a \$124,844 increase, a 39% jump which I feel is excessive considering the fact that the whole process could be abandoned in 2 years, and no provision is in place, to roll the new assessment back to the 1996 level.

5. In a decision dated October 16, 1997, the DOR adjusted the improvement value, stating: **A**Completion factor removed, grade adjusted, physical & functional attributed changed to normal.@

6. The value of the land remained at \$92,178; and the DOR increased the improvement value to \$491,500.

7. The taxpayer appealed to the Powell County Tax

Appeal Board on November 7, 1997 requesting a value of \$66,378 for the land and \$350,000 for the improvements, stating:

Unrealistic - we borrowed \$425,000 to build bldg (Registrar) - we are concerned if system thrown out - new assessed value remains.

8. The county board issued a decision on November 19 1997 disapproving the appeal, stating, ATaxpayer did not provide evidence of actual cost or income information to change DOR appraisal.@

9. The taxpayer appealed that decision to this Board on December 10, 1997 stating:

I appealed increase from 318534, assessor changed original increase to 443,378 (39% increase) to 583,678 (83% increase). Tax Appeal Bd changed to \$583,678/represents 83% increase.

TAXPAYER-S CONTENTIONS

The taxpayer presented a copy of the 1997 assessment notice for the subject property together with a copy of an AB-26 Property Adjustment Form (TP Ex 1). Mountain States Leasing requested a 1997 value of \$66,378 for the land and \$350,000 for the improvements; the loan secured for the project had been \$425,000.

The taxpayer testified the improvements on the subject land were built in 1995. The land was a parcel separated out from a larger tract, and a legal change in the ownership of this parcel was completed and filed prior to construction of the building. After filing and due to

objections of the county attorney, the taxpayer was required to complete the change of ownership as a part of a subdivision process. While the bank required a deed to the parcel of land before a loan could be secured, the bank did accept the original documents as they had been filed and building commenced before the county accepted the legal change of ownership.

DOR-S CONTENTIONS

The DOR testified the subject property was valued utilizing the cost approach. The income approach was not used because there was insufficient data available.

The DOR submitted a copy of the Property Record Card for the subject property. (DOR Ex A) This card reflected that a 50% completion factor was removed (as the building was completed prior to the onset of the new appraisal cycle); and it also showed adjustments had been made to the grade (from average to fair minus), the physical condition (from ~~A~~excellent@ to ~~A~~normal@), and functional utility (from ~~A~~good@ to ~~A~~normal@).

These adjustments were made following the taxpayer's request of September 18, 1997 for a AB-26 property tax review.

Included in the value of the improvements was \$340 for a concrete walk around the building. There was no value attributed to paving; and the DOR stated that this was an oversight.

In a post-hearing submission, the DOR presented information that confirmed the 1996 improvement value before reappraisal (VBR) of \$247,900 as shown on the taxpayer's assessment. In this submission, the DOR indicated that in 1996 the land had been valued as grazing land.

DISCUSSION

From the testimony presented, it is now presumed that the change in ownership and classification was the genesis of the asterisk adjacent to the 1996 VBR's shown on the taxpayer's assessment form. An asterisk indicates a property change. It is now known, as well, that because the legal transfer of the land had not been completed prior to the lien date for the 1996 tax year, the land was classified as grazing land.

One result of the AB-26 review requested by the taxpayer was that the DOR adjusted several factors that drive depreciation and lower assessed improvement value. These adjustments included lowering the grade, physical condition, and functional utility of the building.

On the other hand, it would appear the taxpayer's request may well have brought to the attention of the DOR that a 50% completion factor still existed for the building even though construction was completed prior to the lien date for the 1997 tax year. While the DOR is entitled, under '15-8-601

MCA, to capture property values that have been erroneously assessed, there are procedures set out in statute to be followed. Even though the AB-26 process was, in all likelihood, the catalyst which resulted in the DOR discovering the 50% completion factor had not been removed, once that error had been discovered, procedures ought to have been followed that would have provided the taxpayer with explanations for the increases in the value of the property under appeal. The DOR, in this case, was unable even to verify if a revised assessment notice had been sent to the taxpayer. That is required by the aforementioned statute.

The DOR is entitled to capture property values that have been erroneously assessed; and this Board finds that the taxpayer failed to provide evidence that the 1997 values for land and improvements are not fair market values. Neither cost data, income data, nor market comparisons were presented by the taxpayer as evidence to the contrary.

CONCLUSIONS OF LAW

1. The State Tax Appeal Board has jurisdiction over this matter. '15-2-301 MCA

2. ' **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. (Montana Code Annotated)

3. ' **15-8-601. Assessment revision -- conference for review.** (1) (a) Except as provided in subsection (1)(b), whenever the department discovers that any taxable property of any person has in any year escaped assessment, been erroneously assessed, or been

omitted from taxation, the department may assess the property provided that the property is under the ownership or control of the same person who owned or controlled it at the time it escaped assessment, was erroneously assessed, or was omitted from taxation. All revised assessments must be made within 10 years after the end of the calendar year in which the original assessment was or should have been made.

(b) Within the time limits set by 15-23-116, whenever the department discovers property subject to assessment under Title 15, chapter 23, that has escaped assessment, been erroneously assessed, or been omitted from taxation, the department may issue a revised assessment to the person, firm, or corporation who owned the property at the time it escaped assessment, was erroneously assessed, or was omitted from taxation, regardless of the ownership of the property at the time of the department's revised assessment.

(2) When the department proposes to revise the statement reported by the taxpayer under 15-8-301, the action of the department is subject to the notice and conference provisions of this section. Revised assessments of centrally assessed property are subject to review pursuant to 15-1-211.

(3) (a) Notice of revised assessment pursuant to this section must be made by the department by postpaid letter addressed to the person interested within 10 days after the revised assessment has been made. If the property is locally assessed, the notice must include the opportunity for a conference on the matter, at the request of the person interested, within 30 days after notice is given.

(b) An assessment revision review conference is not a contested case as defined in the Montana Administrative Procedure Act. The department shall keep minutes in writing of each assessment revision review conference, and the minutes are public records.

(c) Following an assessment revision review conference or expiration of the opportunity for a conference, the department shall order an assessment that it considers proper. Any party to the conference aggrieved by the action of the department or a taxpayer who does not request a conference may appeal to the county tax appeal board within 30 days of receipt of the revised assessment or the department's assessment made pursuant to the conference.

(4) The department shall enter in the property tax record all changes and corrections made by it. (Montana Code Annotated)

4. The appeal of the taxpayer is denied and the decision of the Powell County Tax Appeal Board is affirmed.

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ORDER

IT IS THEREFORE ORDERED by the State Tax Appeal Board of the State of Montana that the decision of the Powell County Tax Appeal Board is affirmed and, for the 1997 tax year, the subject property shall be valued at \$92,178 for the land and \$491,500 for the improvements as determined by the Department of Revenue.

Dated this 15th day of September, 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.