

BEFORE THE STATE TAX APPEAL BOARD
OF THE STATE OF MONTANA

NANCY NICHOLSON, ET AL.,)
) DOCKET NOS.: PT-1999-40
Appellants,) through 43
)
-vs-)
)
THE DEPARTMENT OF REVENUE) FACTUAL BACKGROUND,
OF THE STATE OF MONTANA,) CONCLUSIONS OF LAW,
) ORDER and OPPORTUNITY
Respondent.) FOR JUDICIAL REVIEW

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 taxpayers, represented by Alan Nicholson, husband of Nancy Nicholson, presented testimony in support of the appeal. The Department of Revenue (DOR), represented by Michael C. Noble, specialist; and Don Blatt, an appraiser with the Lewis and Clark County Appraisal Office, 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 taxpayers contend that the subject commercial condominium units, located in the Power Block West building in downtown Helena, are inequitably appraised in comparison with four similar commercial buildings located in close proximity. In addition, the taxpayers are seeking a ten percent reduction in the appraised value of the building due to the restrictions present as a result of a scenic easement deed.

FACTUAL BACKGROUND

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

PT-1999-40: Parcel 90, Unit E, Block 30, Helena Townsite, geocode 1888-30-3-03-31-0504, appraised by the DOR for the 1999 tax year at a value of \$4,330 for the land and \$95,610. The taxpayers are requesting a value of \$1,495 for the land and \$30,905 for the improvements.

PT-1999-41: Parcel 90, Unit F, Block 30, Helena Townsite, geocode 1888-30-3-03-31-0505, appraised by the DOR for the 1999 tax year at a value of \$2,780 for the land and \$61,460 for the improvements. The taxpayers are requesting a value of \$961 for the land and \$19,865 for the improvements.

PT-1999-42: Parcel 90, Unit G, Block 30, Helena Townsite, geocode 1888-30-3-03-31-0506, appraised by the DOR for the 1999 tax year at a value of \$4,630 for the land and \$102,440 for the improvements. The taxpayers are requesting a value of \$1,602 for the land and \$33,109 for the improvements.

PT-1999-43: Parcel 90, Unit H, Block 30, Helena Townsite, geocode 1888-30-3-03-31-0507, appraised by the DOR for the 1999 tax year at a value of \$2,160 for the land and \$47,800 for the improvements. The taxpayers are requesting a value of \$749 for the land and \$15,446 for the improvements.

2. The taxpayers appealed to the Lewis and Clark County Tax Appeal Board on February 28, 2000 requesting the above-cited reductions in value, 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.

3. In its April 14, 2000 decision, the county board denied the appeals regarding the scenic easement issue, but reduced the improvement values, stating:

denied scenic easement and reduced value.

4. The county board reductions to the subject improvement values were as follows:

PT-1999-40: (Land value unchanged.) Improvement value reduced from \$95,610 to \$81,268.

PT-1999-41: (Land value unchanged.) Improvement value reduced from \$61,460 to \$52,241.

PT-1999-42: (Land value unchanged.) Improvement value reduced from \$102,440 to \$87,074.

PT-1999-43: (Land value unchanged.) Improvement value reduced from \$47,800 to \$40,630.

5. The taxpayers then appealed those decisions to this Board on May 2, 2000, stating:

This issue has been appealed to the STAB

several times in the past and each & every time STAB has ruled in favor of the taxpayer.

TAXPAYER'S CONTENTIONS

Mr. Nicholson stated that he is representing his wife, Nancy Nicholson, who owns the subject commercial condominium units known as the Power Block West. He acknowledged that his requested values did not reflect any opinion of market value, but were simply placed on the appeal form in order to complete it.

Mr. Nicholson stated his desire to incorporate the arguments he presented on the scenic easement deed issue in the matters of Richard and Doris Pirtz v. Department of Revenue, PT-1999-38, Power Block Associates v. Department of Revenue, PT-1999-39, and George Clemow v. Department of Revenue, PT-1999-44, also heard by this Board on September 6, 2000.

Mr. Nicholson stated that the reason he appealed the valuation of the Power Block West building is because he feels the reduction given to the Power Block building by the county board would also be appropriate for the subject property. The county board granted a reduction to the assessment of the Power Block building to \$35.40 per square foot. The subject Power Block West contains 13,808 usable square feet on the upper four floors, and the main drain line for the city's storm system goes "right through the middle of the building down below", resulting in "one side of

the building which doesn't have an access and the other side which has barely any usable space at all." (Alan Nicholson testimony, State Tax Appeal Board hearing, September 6, 2000). The county board reduced the assessment of the subject building to \$42.04 per square foot. "So, what I'm asking here is that, because the Power Block and the Power Block West are connected, share exits, are of similar design and construction, I think anybody would say that the Power Block is a better building and more elegant building than the Power Block West, that it would be reasonable to lower the value of the Power Block West commensurately with the lowered value per square foot of the Power Block. . . and that would amount to a reduction of approximately \$6 a square foot."

Mr. Nicholson introduced information pertaining to the DOR's assessment of four downtown Helena commercial buildings in contrast to the subject building's appraisal (Taxpayers' Exhibit 1): the Power Block, the Diamond Block, the LaLonde building and the Arcade building. According to Mr. Nicholson, the "Power Block West's assessment is out of line with the others. Should it be out of line? Is it a better building somehow? I don't think so. I think it's inferior to the Arcade and Power Block and probably equal to the Diamond Block and better than the LaLonde building. But it's so far out of whack that I felt I ought to object . . . All these buildings are within one city block of one another."

Mr. Nicholson contends that relative appraised value is

important because a situation in which two similar buildings (similar in terms of rental rates, construction, age, size, etc.) are appraised inequitably creates a competitive advantage for the owner of the building with a lower assessment value: "If the DOR appraises the Diamond Block at about half what the Power Block West is appraised at, so that instead of paying \$5,000 a year in taxes, the Diamond Block only pays \$2,500, they have a \$2,500 competitive advantage with the Power Block West. Every dollar I pay in taxes reduces the value of my building around \$10, if you use a ten percent cap rate. If you keep the income stream constant and the expenses and you only vary the taxes, every time I pay another dollar in taxes, that's one more dollar that doesn't drop to the bottom line. If you take that bottom line, on the income method and look at the cap value of the building, that's a dollar I don't have to be capped at ten percent, so that's a \$10 reduction. So, if I pay \$2,500 more in taxes than the Diamond Block, I actually have a building that's further reduced \$1,000 over that value. And that guy can rent for less than I can because he's got an extra \$2,500 in his pocket that I don't have that I have to cover with rents in order to at least break even. So, it's important in the whole theory of property taxation in Montana that comparable properties are taxed in a comparable way."

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Taxpayers' Exhibit 1 is a comparison of the DOR valuations concerning four buildings in downtown Helena, and the subject:

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COMPARATIVE VALUATIONS by the State of Montana
09/06/2000

	Age (years)	Department's Area Calculation	Department's Value	Department's Value per sq foot	After County Reduction per sq foot
Power Block West	>100	13,808	682,900	\$49.46	\$42.04
Power Block	>100	55,573	2,246,700	\$40.43	\$35.40
Lalonde	About 73	14,060	321,400	\$22.86	
Diamond Block	>100	14,114	328,650	\$23.29	
Arcade	17	57,105	2,577,950	\$45.14	
Power Block West			Department's Value	After County Reduction	
Unit E		14.00%	95,610	81,268	85.00%
Unit F		9.00%	61,460	52,241	85.00%
Unit G		15.00%	102,440	87,074	85.00%
Unit H		7.00%	47,800	40,630	85.00%
Power Block			2,246,700	1,967,221	87.56%

Mr. Nicholson discussed his reluctance to supply the DOR with income and expense information pertaining to the subject building or any other building he owns or manages: "There is no requirement for anyone to give the DOR operating income and expense information. If only ten percent of the taxpayers turn in the information, you've got a terribly skewed set up here. You're gonna market value ten percent of the buildings using the income approach and the other 90 percent using something else because you haven't been able to collect the information. Now, if the staff was adequately staffed, you could collect the information anyway. You can get the information even if the taxpayer won't give it to you. So, it is inappropriate for the DOR to collect it from some taxpayers and not from others and that's the reason that I withhold it. Plus, the Department is not equipped, really, to use this information very well due to manpower reasons or adequately funded. . ."

Taxpayers' Exhibit 2 is a copy of a letter to Mr. Nicholson from his attorney, Gary Davis, on this subject:

You reported that you are appealing the valuation of various parcels of real property and intend to appear before the County Tax Appeal Board, and possible appeal to STAB. You asked us to give you an opinion regarding the power of the Department of Revenue or the county treasurer to require you to provide sensitive business information such as income and expense pertaining to some of the properties in dispute.

Section 15-8-304 states that the department may "subpoena

and examine" any person in relation to "any statement furnished to the department. . ." Under Section 15-8-301, the department can require a person to identify all property owned, controlled or possessed by that person. Section 15-7-308 requires that information contained in a realty transfer certificate, except for water rights, is confidential.

The common thread which runs through all property taxation statutes is that the department must obtain its own data and make its own comparisons of value, based on information supplied by the taxpayer on various forms. Nowhere is there a provision which permits the department to require a taxpayer to answer questions about his property beyond the fact that he owns, possesses or controls it, nor is there a provision which suggests that the department can compel a taxpayer to provide information regarding gross income or rents, expenses of operating the property, or profits. However, if you the taxpayer voluntarily provide additional information, you would be subject to further inquiry or analysis of that information, as bearing on the duties of the taxing authorities . . ."

In summary, Mr. Nicholson is asking that his argument that relative values are important be recognized. He is asking for a reduction commensurate with that granted by the county board on the Power Block building (from \$42.04 to \$35.40 per square foot), or \$488,803 for the subject building. Mr. Nicholson stated that he is not appealing the land values. He is also asking for a ten percent reduction for the presence of scenic easement deeds, using the same arguments he presented in *Richard and Doris Pirtz v. Department of Revenue, PT-1999-38*, *Power Block Associates v. Department of Revenue, PT-1999-39*, and *George Clemow v. Department of Revenue, PT-1999-44*. (The presence of scenic easement deeds,

which require the owners to preserve and maintain the historic nature of their buildings in a very specific manner, diminishes the market value of the buildings because an expense requirement is placed upon the owners that wouldn't exist in the absence of the deeds.)

DOR'S CONTENTIONS

DOR Exhibits A, B, C and D are copies of the appraisal records pertaining to the subject property. The DOR performed a cost approach to value on these properties.

Regarding the issue of why the Power Block West has a higher per square foot value than the other buildings referenced by Mr. Nicholson, Mr. Blatt explained that, since the Power Block building is so much larger, the price per square foot came out slightly less. This is due to the theory of economy of scale: "The whole overhead cost, \$1,000 permit to build 1,000 square foot house versus a similar priced permit but it's 100,000 square foot. So, we start out at the very beginning of the construction process as far as the costs associated with building that building, going on to the economies of scale, of, jeez, I don't have to buy just 10,000 at this price, I've got to order a million bricks and so I get the price reduction for the larger order. The exact same building, where the only difference is size, the price per square foot goes down, economies of scale through the whole development."

Depreciation also accounts for a large portion of the

differences in the valuations of the buildings referenced by Mr. Nicholson in Taxpayers' Exhibit 1. "The LaLonde building and the Diamond building, in my opinion, have a lot more accrued depreciation than the Power Block or the Power Block West. A simple internal inspection of the Power Block will show you it's in fine shape. A simple internal of the entire Diamond Block will show you, yeah, they did some remodeling here and some remodeling there, but the overall structure and the entire building, depreciation-wise, certainly deserves much more depreciation. . . The Diamond Block, the LaLonde building, and even the Arcade building, they're not in the same shape, depreciation-wise, as the Power Block and Power Block West. And I've done full internals on all of these buildings."

In addition, the DOR attempted to confirm its value through its request for income and expense information regarding the subject building, which it has not received.

Mr. Noble made the statement that taxpayers "are absolutely required to, by law, to give income information." The Board asked Mr. Noble, by way of a post-hearing submission, to provide the statutory authority for making such a statement and allowed a prescribed time period for doing so. By letter dated September 26, 2000, Mr. Noble stated that "After conferring with our legal division, it was decided no opinion would be forthcoming since the Department was working on and would submit legislation to

the 2001 legislature regarding that very issue. Obviously, rendering an opinion at this time would not be appropriate. I relayed that information to you prior to the September 15 required submittal date. I would like the Board to take legislative notice of two laws that pertain, I believe, to the issue of taxpayers submitting requested information. Those laws are: 15-1-301, 15-1-303 and 15-8-111, MCA. . ."

Mr. Nicholson responded to the DOR letter on October 2, 2000 (received by this Board on October 4). In his response, Mr. Nicholson stated his contention that the statutes referenced by Mr. Noble pertain "primarily to municipalities and to cases of alleged fraud" and, thus, are not relevant in the present appeals.

BOARD DISCUSSION

The Board finds insufficient evidence existing in the record to indicate that the value should be other than that found by the county board. Indeed, Mr. Nicholson's own testimony was that he believes that value is probably too low.

The Board is satisfied with the DOR's explanation regarding the discrepancies between the appraisals referenced by Mr. Nicholson and the subject appraisal.

The Montana Supreme Court held in State ex rel. Schoonover v. Stewart, 89 Mont. 257 (1931), that: "*It is required that there shall not be any unfair discrimination among the several counties, or between the different classes of taxable property in*

any county, or between individuals."(emphasis supplied)

Also, "And in no proceeding is one to be heard who complains of a valuation which, however erroneous it may be, charges him with only 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 too little; and another too much."

Regarding the issue of the requested ten percent reduction for the presence of a scenic easement deed, the Board finds in favor of the DOR. Mr. Nicholson failed to present substantial and credible evidence in support of his contention that the market value of the subject buildings has been negatively influenced by the presence of the scenic easement deeds.

Regarding the post-hearing submissions of the DOR and the taxpayers, the Board finds them not pertinent to these appeals and disregarded the information in its deliberations.

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**

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 that county at the 1999 tax year value as determined by the Lewis and Clark County Tax Appeal Board.

Dated this 4th of October, 2000.

BY ORDER OF THE
STATE TAX APPEAL BOARD

GREGORY A. THORNQUIST, Chairman

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

DONNA EUBANK
Paralegal