

BEFORE THE STATE TAX APPEAL BOARD
OF THE STATE OF MONTANA

RICHARD & DORIS PIRTZ,)	DOCKET NO.: PT-1999-38
)	
POWER BLOCK ASSOCIATES,)	DOCKET NO.: PT-1999-39
)	
GEORGE CLEMOW,)	DOCKET NO.: PT-1999-44
)	
Appellants,)	
)	
-vs-)	
)	
THE DEPARTMENT OF REVENUE)	FACTUAL BACKGROUND,
OF THE STATE OF MONTANA,)	CONCLUSIONS OF LAW,
)	ORDER and OPPORTUNITY
Respondent.)	<u>FOR JUDICIAL REVIEW</u>

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

The DOR counters that substantial and credible market evidence does not exist in support of this contention.

FACTUAL BACKGROUND

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

Richard and Doris Pirtz v. Department of Revenue, PT-1999-38: Lot 29A, Block 30, Helena Original Townsite, geocode 1888-30-3-03-27-0503, and the improvements located thereon (the Gold Block). The DOR appraised the land at \$18,950 and the improvements at \$116,680. The taxpayers are requesting a value of \$6,125.50 for the land and \$40,814.50 for the improvements.

The Power Block Associates v. Department of Revenue, PT-1999-39: Helena Townsite, Block 30, north 26 feet of Lots 30 and 31, part of 32, geocode 1888-30-3-03-29-0000, and the improvements located thereon (Power Block and Power Block West buildings). The DOR has appraised the land at \$57,526 and the improvements at

\$2,246,700. The taxpayer is requesting a value of \$19,887 for the land and \$849,620 for the improvements.

George Clemow v. Department of Revneue, PT-1999-44: Parcels 39, 93 and 94 in Section 30, Township 10 North, Range 3 West, Helena Townsite, geocode 1888-30-3-04-07-0000, and the improvements located thereon (the Securities Building). The DOR appraised the land at \$35,791 and the improvements at \$659,100. The taxpayer is requesting a value of \$20,000 for the land and \$350,000 for the improvements.

2. The taxpayers appealed to the Lewis and Clark County Tax Appeal Board on February 28, 2000, 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 decisions, the county board denied the appeals under docket numbers PT-1999-38 and PT-1999-44, stating: *Scenic easement denied.* In the appeal under docket number PT-1999-39, the county board reduced the improvement value from \$2,246,700 to \$1,909,695, stating: *denied scenic easement and reduced value.*

4. 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.

TAXPAYERS' CONTENTIONS

Mr. Nicholson stated he represents Richard and Doris Pirtz (Gold Block building) and George Clemow (Securities building) by virtue of letters of authorization in the record. The Power Block Associates building is partly owned by his wife, Nancy Nicholson.

The issue in these three appeals is what Mr. Nicholson believes to be an appropriate reduction in the improvement value due to the presence of scenic easement deeds. Mr. Nicholson accepts all the DOR values "except for what you might see fit to give as a result of the scenic easement deeds which were denied by the county. What I've asked you to do is simply reaffirm what your predecessors have done, in my opinion, three times over the reappraisal cycles and provide this ten percent reduction in value due to the scenic easement deed."

Taxpayers' Exhibits 2, 3, 4 and 5 are copies of the scenic easement deeds governing the subject buildings. According to Mr. Nicholson, these deeds require that, in essence, the properties are actually deeded to the City of Helena. The deed restrictions on the façade of the buildings are as follows (Taxpayers' Exhibit 2): 1) *Grantors agree to restore the exterior of the . . . buildings in conformity with the renderings on file in the offices of the Grantee (City of Helena). No such restoration shall be begun,*

however, until plans and specifications depicting the proposed remodeling have been submitted to and written approval obtained from grantee. 2) Once the exterior of the premises have been restored as depicted in the renderings, no construction, alteration, or remodeling shall be undertaken or permitted which would affect either the lot herein described or the exterior, including the roof, of any building or the improvement located thereon without the written permission of the Grantee, the City of Helena, duly signed by its Mayor. 3) No advertising of any kind or nature shall be located on or within said property without written approval being first obtained from Grantee. 4) The Grantors agree at all times to maintain the subject property in a good state of repair so that no deterioration in its exterior appearance shall take place. If all or any of the improvements placed upon the property described herein shall be destroyed or damaged by fire, storm or other casualty, Grantors agree to restore the improvements in conformity with the renderings. 5) In the event a violation of these restrictions is found to exist, Grantee, the City of Helena, may, following reasonable notice to the Grantors, institute a suit to enjoin by exparte, temporary and/or permanent injunction such violation, to require the restoration of the premises to its prior condition, and in the alternative, the Grantee may enter upon the premises, correct any such violation, and hold the grantors, their

heirs and assigns, responsible for the cost thereof. 6) The Grantors agree that these restrictions will be inserted by them in any subsequent deed, or other legal instrument, by which they divest themselves of either the fee simple title to or of their possessory interest in the premises. 7) The Grantors agree that there shall be no further conveyance of any interest in the façade of the . . . buildings without prior written consent of the City of Helena."

Thus, these deeds require that the building owner maintain the facade of the building in a historic condition. "The building owner can't do anything which destroys the historic value of it. If you're going to place any signage on it, you need permission. If the building is destroyed, you need to rebuild it according to certain historic guidelines. This necessitates expense that would not otherwise be required. A potential investor would view this as a negative against the property." (Alan Nicholson testimony, State Tax Appeal Board hearing, September 6, 2000).

Mr. Nicholson testified that he entered into these agreements with the City of Helena for three reasons: 1) Altruism. He believed in the historic district and he wanted the buildings to be maintained historically. "I knew that I wouldn't own them forever and I thought it was appropriate that they be maintained historically." 2) There was also a reduction in

property taxes, which the city promoted, "it was my recollection it was 25 percent, as a result of giving the city these tax deeds because you were essentially deeding away something and placing requirements on the building that you would not otherwise have." 3) "The federal government also recognized this nationwide and allowed a charitable deduction against income taxes."

Taxpayers' Exhibit 6 (and DOR Exhibit A) is a copy of an Engineering and Valuation Report issued by the Seattle District of the Internal Revenue Service. Mr. Nicholson testified that all of the subject buildings were appraised by the Internal Revenue Service because "after we had put them on our income tax return and had taken some deductions, the government questioned the values" and undertook an independent appraisal to determine whether the values Mr. Nicholson claimed were acceptable to that agency. The taxpayers' exhibit contained only the portion of the entire appraisal deemed appropriate by Mr. Nicholson. The date of valuation is 1982. The summary of recommendations follows:

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Alan D. Nicholson
Years: 1982

Engineering & Valuation Report
Seattle, Washington

SUMMARY OF RECOMMENDATIONS

Fair Market Value of Historic Facade Easement Charitable Contributions for Four Buildings Located in Helena, Montana:

<u>Building</u>	<u>Fair Market Value of Historic Facade Easement</u>		<u>Difference</u>
	<u>100% of Claimed</u>	<u>100% of Recomm.</u>	
Power Block	\$146,480	\$146,480	-0-
Securities	200,000	106,410	(\$93,590)
Power Blk W	72,800	110,700	37,900
Gold Block	65,000	65,000	-0-

Taxpayer's shares of the fair market value for the four historic facade easements using the above values are as follows:

<u>Building</u>	<u>Claimed</u>	<u>Recomm.</u>	<u>Difference</u>
Power Block (10% Partnership)	\$14,648	\$14,648	-0-
Securities (50% Partnership)	100,000	53,205	(\$46,795)
Power Blk W (100% Partnership)	72,800	110,700	37,900
Gold Block (100% Partnership)	65,000	65,000	-0-

The above recommendations have been discussed with the taxpayer, and he has expressed agreement.

The purpose of this exhibit, according to Mr. Nicholson, was to demonstrate that some value was given away through the scenic easement deed, that the Internal Revenue Service recognized that, and that there was a charitable donation. Mr. Nicholson stated that his recollection was that the values he determined represented 25 percent of what he felt the buildings were worth at the time of the appraisal (1982).

Mr. Nicholson stated that he has made the argument for a percentage reduction in the appraised value of the subject buildings "for every reappraisal cycle since I've owned the buildings. After the first reappraisal cycle, the Department came back and said 'we don't think there's any reduction in value for these scenic easement deeds, so we're not gonna give you anything.'" Mr. Nicholson's argument was that one of the reasons he granted the scenic easement deed to the city was for the 25 percent reduction in property taxes gained. He feels "a bit of harassment" from the DOR because he is forced to come to the appeal system after each reappraisal. In each instance, the State Tax Appeal Board has reinstated a ten percent reduction in the appraised value of the improvements. The scenic easement deeds place consequences on the building owner which have costs attached to them and do not enhance the income.

Mr. Nicholson contends the market value of the subject improvements is diminished due to the scenic easement deed. In the

absence of the deed, Mr. Nicholson argues that the could do almost anything he wanted to the exterior of these buildings. He did not provide sales information in support of decreased valuation.

According to Mr. Nicholson, "the salient issue about appraisals is not the value the Department puts on, but a process whereby the Department can value every like property alike or come as close as they possibly can. It wouldn't matter whether every appraisal in the state was ten percent under, 20 percent over, 15 percent under, 100 percent over, it wouldn't matter. What matters is that they are the same for similar properties because the state adjusts that out at the end."

Mr. Nicholson stated that the reason he does not return DOR requests for income and expense information is "first of all, you're not required to do it, but when you only have a ten percent return rate, to use that information on your buildings and not use it on the others, gives you another skew in the valuations. It just skews them again. And what you want is consistency between buildings so you don't unfairly penalize one person with either taxes that are either too low or too high relative to people with similar properties."

DOR'S CONTENTIONS

The DOR presented a series of exhibits (DOR Exhibits D, E, H, I, J, K and L) pertaining to the physical characteristics and DOR's cost approach appraisal of the subject properties. Also

presented were copies of correspondence (DOR Exhibits F and G) relating to the DOR's attempts to gain income information from the taxpayers and Mr. Nicholson's response that he was "reluctant to supply the DOR with our income and expense records on our buildings. This is confidential information and highly proprietary. The department has neither the personnel nor the expertise to use this information in its appraisals. Furthermore, since it is not uniformly or universally collected, it can only contribute to inequitable assessments between properties."

The DOR argues that no solid market evidence exists in support of a reduction in value due to the presence of the scenic easement.

DOR Exhibit B is a copy of a realty transfer certificate signifying that a sale of the Securities Buildings occurred on April 1, 1999 for \$875,000. Mr. Nicholson sold the building to George Clemow. Mr. Nicholson's testimony was that he was unaware of whether or not Mr. Clemow was cognizant of the presence of the scenic easement deed. The DOR assessed value on this building was \$694,891 as of January 1, 1996. The DOR disputes the further reduction of that assessed value by ten percent in view of the 1999 sales price. Mr. Nicholson acknowledged that his requested value for the Securities building, cited on the appeal form, of \$370,000 was "made up." "I just threw something in there. It doesn't reflect any kind of market value."

DOR Exhibit C is a copy of a realty transfer certificate signifying that the Gold Block building sold on November 11, 1998 for \$450,000. Nancy Nicholson sold the building to Richard F. and Doris M. Pirtz. The DOR assessed value on this building was \$135,630 as of January 1, 1996. The DOR again disputes the further reduction of that assessed value by ten percent in view of the 1998 sales price. Mr. Nicholson acknowledged that his requested value for the Gold Block building, cited on the appeal form, of \$46,900 was "made up." "I just threw something in there. It doesn't reflect any kind of market value."

DOR Appraiser Don Blatt testified that the DOR did not decrease the value of any buildings with scenic easement deeds in recognition of the presence of those deeds ". . . Because the buyers and the sellers in the market that I've talked to and the fee appraisers that I've talked to all tell me that, if anything, it increases the value of the property in that downtown area, it does not decrease the value of property in the downtown area. There is no adjustment in the minds of buyers and sellers and therefore, I made no adjustment on my full market appraisal."

The DOR expressed frustration over its inability to gain income and expense information on the subject buildings, or a significant number of other buildings.

The DOR further stated that nothing in the easement deeds or in the record before this Board demonstrates the justification

for a reduction in the value of the property due to the scenic easement deeds. The sales of the Gold Block building and the Securities building indicate a substantial increase in value between general assessment day, January 1, 1996 and 1998 and 1999, the sales dates, and not a decrease as suggested by Mr. Nicholson.

In addition, by the taxpayer's own admission, the requested values do not reflect the taxpayer's view of market value, but were simply "made up. The requirements that the subject properties are to be maintained in a specified manner would tend to increase, not decrease, the value of the property, in the DOR's view.

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

This Board, contrary to the determination of its predecessors, finds that 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. In the present appeals, the Board has benefit of recent sales which, although occurring beyond the time frame prescribed for use in the current appraisal cycle, call into question any taxpayer claim that the DOR assessed values should be further reduced by ten percent. Indeed, regarding the \$450,000 sale of the Gold Block building, Mr. Nicholson testified that this building probably sold for more than it should have (" . . . We were delighted. We didn't hesitate for one millisecond to sign the buy-sell agreement"). If the market dictates that the presence of the scenic easement deed

necessitates a ten percent reduction, this building should have sold for **\$500,000** in the absence of the scenic easement deed. Instead, Mr. Nicholson stated that the **\$450,000** sales price was more than they expected.

Further, it does not appear that the ten percent reduction previously afforded had any foundation in market sales indications. The Board reviewed the May 7, 1992 decision issued by a previous Board in the matter Drake and Associates, et al., v. Department of Revenue, PT-1991-137 through 147 and cross appeals PT-1991-158 through 168. The issue in these appeals was similar to the present appeals: a request for a ten percent reduction in the DOR's appraised value due to the presence of scenic easement deeds. From that decision:

. . . Erwin "Swede" Schock, DOR Area Manager, provided testimony concerning the prior application of a 10% reduction in value to properties in this area, because of scenic easements. He said that the amount of reduction was an arbitrary amount applied by Roy Kimble, the appraiser in Lewis and Clark County at that time. He added that it was not applied as the result of an Administrative Rule, or DOR policy. Prior to the time of the appraisal cycle beginning in 1986, he discussed the situation with Russ Hyatt, the appraisal supervisor, and suggested that he attempt to document the 10% loss in value from the market sales that were occurring. It could not be established that there was ever any justification for the reduction in the prior cycle, so as a part of the reappraisal the 10% reduction for the scenic easements was removed. It was done along with the

overall appraisal to arrive at market value. He agreed that an appraiser needs to consider any easement and how it might affect value, but if the effect is there it will be demonstrated in the market. (Emphasis supplied.)

Mr. Nicholson argued that "the salient issue about appraisals is not the value the Department puts on, but a process whereby the Department can value every like property alike or come as close as they possibly can. It wouldn't matter whether every appraisal in the state was ten percent under, 20 percent over, 15 percent under, 100 percent over, it wouldn't matter. What matters is that they are the same for similar properties because the state adjusts that out at the end."

The Board points out that the application of ten percent reductions solely to the appraisals of the subject properties in the absence of substantial supporting market evidence, while excluding "similar properties" from the same treatment, would result in the very inequities Mr. Nicholson feels are to be avoided.

The Board will uphold the county board reduction to the appraisal of the Power Block Associates building (docket number PT-1999-39, from \$2,246,700 to \$1,909,695, even though there is little justification in the record for that reduction and the county board decision does not state why the improvement value was reduced. The DOR did not appeal that decision and the Board does not wish to penalize the taxpayers for bringing an appeal before it.

Regarding the post-hearing submissions of the DOR and the taxpayer, 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 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 denied and the decision of the Lewis and Clark 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 subject properties 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 as determined by the Department of Revenue and 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

(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
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