

BEFORE THE STATE TAX APPEAL BOARD
OF THE STATE OF MONTANA

Ronald & Bruce Simon,)	
)	DOCKET NOS.: PT-1997-171
Appellants,)	and PT-1998-19R
)	
-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 appeals were heard on December 17, 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 taxpayers, represented by Bruce Simon, presented testimony in support of the appeals. The Department of Revenue (DOR), represented by Gene Widmer, regional manager, presented testimony in opposition to the appeals. Testimony was presented, exhibits were received, and the Board then took the appeals 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, the hearing, and of the time and place of the hearing. All parties were afforded opportunity to present evidence, oral and documentary.

2. The property which is the subject of this appeal is described as follows:

The improvements located on Lots 21 through 24, Block 57, Billings Original Townsite, known as Fratt's Condos, Unit 1, County of Yellowstone, State of Montana. (DOR ID number A00367)

3. For the 1997 and 1998 tax years, the DOR appraised the subject improvements at a value of \$464,041 and the land at a value of \$64,834.

4. The taxpayers appealed to the Yellowstone County Tax Appeal Board on June 4, 1998 requesting a reduction in value to \$416,626 for tax year 1997. The taxpayers did not dispute the DOR land value of \$64,834. For tax year 1998, the taxpayers appealed to the county board on July 13, 1998, again requesting a value of \$416,626 and accepting the DOR land value of \$64,834. The stated reasons on the appeal forms were as follows:

I disagree with the method used to compute my value. I do not accept the use of percentages.

5. In its September 25, 1998 decisions, the county board denied the appeals, stating:

It is the Board's opinion this common area is a gray area. It should be up to the owners of the subject property to review the Declaration of Condominium Ownership and amend as needed. This appeal is denied.

6. The taxpayers then appealed that decision to this Board on September 29, 1998, citing the following reasons for appeal:

I do not agree with your reading of the condo asso.(sic) Declaration.

STATEMENT OF THE ISSUE

The taxpayers dispute the percentage of ownership assigned to the subject Fratt Condominium Unit #1, housed on the first floor of the Fratt Condominium in downtown Billings. The taxpayers state they do not dispute the DOR's determination of total value for the building as a whole.

TAXPAYERS' CONTENTIONS:

The subject property is a condominium retail/office building. The first floor, the basement, and the mezzanine area are owned by the taxpayers and contain retail space. The second and third floors are solely office space. Mr. Simon testified that he does not dispute the DOR land value of \$64,834. He stated that he and his brother, Ronald Simon, own a 44 percent undivided interest in the land, as owners of Condominium Unit 1. Mr. Simon objects to applying a percentage of ownership to the entire DOR value, including land, since he

only owns 44 percent of the land. He wants to be assigned 44 percent of the value since that's all he owns.

The DOR revalued the subject property, upon request of the taxpayers, and applied a substantial reduction to the original appraised value.

Mr. Bruce Simon asserted that no specification exists in the condominium declaration documents as to his percentage ownership of the entire building. The DOR has ascribed 55 percent of the total value of the property to the taxpayers' condominium unit 1. The other two floors/condominium units are assigned 22 percent each of the total value.

Mr. Bruce Simon believes a more appropriate valuation method would be to subtract the DOR values for the second and third floors and assign the remaining valuation to the subject.

He testified the amended condominium association documents (Taxpayers' Exhibit 5) are crucial to DOR valuation. The condominium association documents dictate the percentage of ownership in all general common elements: all sidewalks, plants and materials installed on the property; the roof and structural portions of the building, and all other elements necessary for the safety, maintenance and existence of the condominium. Mr. Simon described his understanding of the general common elements of the building: the building entrance lobby, the elevator, the columns, the outside wall, the roof,

sidewalks, the water and sewer system, landscaping, and all other structural elements essential for safety and maintenance.

The condominium documents state the percentage of ownership for the general common elements shall be 60 percent for Unit 1 and 40 percent for Unit 2. Such percentage of ownership of common elements shall be the owner's liability for common expenses and matters within the province of interest of the respective owners, according to the condominium documents (Taxpayer's Exhibit 5, page 4).

Mr. Bruce Simon believes the crux of the dispute lies in the DOR's misinterpretation of the condominium documents. The DOR has assigned 60 percent of the total building value to the subject unit 1 in accordance with its interpretation of the condominium units. He testified that if the sidewalk needs replacing, for example, he pays 60 percent of the sidewalk repair. The same situation would hold true for the "outside skin" of the building, the sewer and water lines, and the structural columns and foundation.

Mr. Bruce Simon believes the limited common elements to be the stairway leading upstairs. He stated Mr. Widmer believes the elevator and lobby are limited common elements. Mr. Simon would characterize the elevator and lobby as general common elements. He stated that the condominium association declaration has been amended. The original declaration

described the elevator and lobby as part of unit 2. He testified that sliding doors now enter the lobby area, rendering that area under general common use. Mr. Simon stated he currently pays 60 percent of the maintenance costs for the elevator and lobby area, reflecting its usage as general common area.

Mr. Simon testified unit 3 was purchased in the base year 1997 by the present owner for \$240,000. His belief is that this sale in the base year is the best indicator of market value. He subtracted the DOR land value for unit 3 (\$41,258) from the purchase price to arrived at a value for unit 3 of \$198,742. He stated unit 2 is essentially the same size and employs the same usage so he arrive at the same value as he found for unit 3 (\$198,742) He then subtracted the \$480,000 (the 1997 sales price times two for the other two units 2 and 3) from the total value for the improvements (\$805,600) and assigned the remaining value to the subject property, \$325,600. These ownership allocations equal approximately 50 percent for the taxpayers and 25 percent for each of the other two units.

He stated further justification for the above allocations is the property insurance for the buildings. The condominium owners purchase a single policy covering the Fratt Condominium Association which is apportioned, for billing purposes, for each owner based on a specified requested

valuation by each owner. The taxpayers pay half of the insurance premiums and the other two owners each pay 25 percent.

DOR'S CONTENTIONS:

Mr. Widmer testified that the DOR used the replacement cost less depreciation approach to value due to a scarcity of sales of condominium properties similar to the subject. The income approach, because of the mixed usage of the building (office and retail), was not used for the same reason: a lack of good comparable properties. The cost approach yielded a total value of \$773,401 for the general common elements of building. The general common elements are defined, according to the declaration of condominium ownership for the Fratt Condominium, (Taxpayer's Exhibit 5 and DOR Exhibit B) as the foundation, columns, girders, beams, supports, main walls, roof, entrance and exits of the building, the sidewalks, water and waste disposal units and "all apparatus and installations existing for common use. . .", as specified in the Declaration of Condominium Ownership for Fratt Condominium (Taxpayer's Exhibit 5 and DOR Exhibit B). The subject property was assessed at 60 percent of that total value, or \$464,041. The DOR assigned a value of \$40,109 for the limited common elements (the lobby and the elevator) in the building, but the subject property was not assessed a value for

those portions. The total DOR land value is \$147,350. The subject property was assessed at 44 percent of the total land value, or \$64,834.

Thus, the DOR attributed 55 percent of the total property value to the subject property.

Mr. Widmer's testimony was that he was unaware of the structural changes made to the elevator/lobby area which render that area under common general usage. However, he stated the assessment implications of making such a change in the DOR records would not be advantageous to the taxpayers.

BOARD'S DISCUSSION

The Board finds the taxpayers failed to present substantial and credible evidence in support of their contention that the decision of the Yellowstone County Tax Appeal Board was erroneous. The appeals are therefore denied.

The declaration of condominium ownership for the Fratt Condominium (Taxpayer's Exhibit 5 and DOR Exhibit B) clearly define the general and limited common elements as well as the percentage of ownership in all common elements as determined by the condominium association representatives. This document assigns 60 percent of the ownership, "including the sidewalks, landscaping, the structural portions of the building and all other elements necessary for the safety, maintenance and existence of the building to the owner of unit

1, the taxpayers. The DOR has properly assessed 60 percent of the total appraised value of the building, \$464,041, to the taxpayers. Mr. Simon testified he does not question the value determinations found by the DOR through a series of meetings between Mr. Simon and Mr. Widmer.

Neither the Board nor the DOR may ignore the stated declarations found in Taxpayer's Exhibit 5 and DOR Exhibit B. Only the parties to that document have the ability to create some other distribution of ownership.

CONCLUSIONS OF LAW

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

2. **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. **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. **15-8-511. Undivided interest in common elements of condominium.** (1) Each unit of a condominium project is considered a parcel of real property subject to separate

assessment and taxation. Each unit owner must be assessed for the unit owner's percentage of undivided interest in elements of the condominium project, except parks, owned in common by the unit owners. The percentage of undivided interest stated in a unit declaration is the figure to be used in assessing common elements under this section.

5. ARM 42.20.105 (b) Appraised value will be allocated to each (condominium) unit according to its percentage of individual interest in condominium common elements. The allocation will be based on the percentage of undivided interest in the common elements set forth in the condominium declaration required by 15-8-111, 70-23-301, and 70-23-403, MCA. Allocation of appraised value will be determined by multiplying the percentage (expressed as a decimal) times the appraised value of the entire condominium project.

6. The appeal of the taxpayer is hereby denied and the decision of the Yellowstone 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 property shall be entered on the tax rolls of Yellowstone County by the Assessor of that county at the 1997 and 1998 tax year values of \$464,041, as determined by the Department of Revenue. The appeal of the taxpayer is denied and the decision of the Yellowstone County Tax Appeal Board is affirmed.

Dated this 3rd of February, 1999.

BY ORDER OF THE
STATE TAX APPEAL BOARD

(S E A L)

PATRICK E. MCKELVEY, Chairman

GREGORY A. THORNQUIST, 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

I certify that on this 3rd day of February, 1999, a true and correct copy of the foregoing Order was served by placing same in the United States Mail, postage prepaid, and addressed as follows:

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Elwood Hannah, Chairman
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DONNA EUBANK
Paralegal