

BEFORE THE STATE TAX APPEAL BOARD

OF THE STATE OF MONTANA

SUHR TRANSPORT,)	
)	DOCKET NO.: PT-1996-29
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 came on regularly for hearing on the 4th day of March, 1998, in the City of Great Falls, 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 duly given as required by law. The taxpayer, represented by attorney Floyd Corder, Harvey Lowthian, president, and Philip Rowan, appraiser, presented testimony in support of the appeal. The Department of Revenue (DOR), represented by Peter Fontana and Rich Dempsey, 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, the hearing hereon, and of the time and place of said 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:

Improvements only located on BN Car Shop
Addition, Parcel #354825, City of Great
Falls, Cascade County, MT.

3. For the 1996 tax year, the DOR appraised the subject property at a value of \$665,889 in accordance with an Order of this Board.

4. The taxpayer appealed to the Cascade County Tax Appeal Board on 11/13/96 requesting a reduction in value to \$330,000 for the improvements.

5. The County Board denied the appeal.

6. The taxpayer then appealed that decision to this Board on 12/3/97.

7. The subject property value was appealed by the taxpayer in 1993. This Board issued an Order in the matter

docketed as PT-1993-2565 on 1/5/96 establishing the property value for ad valorem taxation for the appraisal cycle beginning in 1993 and ending in 1996. Neither the taxpayer nor the DOR sought Judicial Review of that Order.

8. An Order of this Board establishing the value of property for ad valorem taxation purposes, does so for the year of the appeal and the subsequent tax years within an appraisal cycle.

TAXPAYER'S CONTENTIONS

The taxpayer argued that this appeal is properly before this Board because they have received an assessment notice from the DOR for the year 1996, and as such have the right to appeal from that notice. They consider this to be a new appeal for a new year.

The taxpayer contends that there has been a change in the dollar amount paid to the owner for the ground lease. That change they argued was a change in the circumstances surrounding the subject improvements, and as such the value of those improvements was changed.

DOR CONTENTIONS

The DOR asked this Board to dismiss the appeal based on the fact that the taxpayer had not sought Judicial Review

of this Board's Order in the 1993 appeal. The value as determined by this Board was on an assessment notice sent to the taxpayer for 1996, but was done to be in compliance with the value established by the Board Order in PT-1993-2565. The DOR argued that the notice was not an indication of a new assessment, merely the application of this Board's decision that established the value for the 1993 appraisal cycle, and as such the taxpayer cannot reappeal the same property within the same appraisal cycle. The taxpayer had a remedy through Judicial Review that was not followed, and as such cannot now come back to the Board seeking a change in the value the Board had established.

BOARD'S DISCUSSION

The burden that must be met by the taxpayer in this appeal involves two issues; (A) what change has been made in the property itself, or (B) what circumstances surrounding the property which affect its value are there now (1996) that did not exist at the time of the prior appeal (1993).

When an appeal is filed, the Board believes that it must hear the testimony of the parties to determine if in fact there have been changes that have an impact on the value of the property. A dismissal of the appeal as sought by the DOR would

not satisfy the opportunity afforded the taxpayer to provide evidence of such change if it exists.

The Board allowed the testimony of the taxpayer and their witness to be directed at these issues. There have been no changes to the property itself. There have been changes in the party who represents the owner in the ground lease provisions, and there has been a change in the ground lease amount. There has been no change in the body of the lease itself dated April 16, 1975, as amended on various dates, and signed February 1, 1984. (Ex 2)

The appraiser witness for the taxpayer stated that there were no changes in the property that affected his appraisal report and conclusion of value, to include no changes that would affect the value from an income approach. He stated that he was not valuing the business of Suhr Transport, but the subject improvements which have not changed.

It is therefore the Opinion of this Board that the appeal be denied.

CONCLUSIONS OF LAW

1. 15-2-301(5), MCA; The decision of the state tax appeal board is final and binding upon all interested parties unless reversed or modified by judicial review. Proceedings for judicial review of a decision of the state tax appeal board under this section are subject to the provisions of 15-2-303

and the Montana Administrative Procedure Act to the extent that it does not conflict with 15-2-303.

2. 2.51.403(2) Administrative Rules of Montana;
With respect to taxable real property and improvements thereon, the decision of the state tax appeal board shall be final and binding unless reversed or modified by the district court upon judicial review. If the decision of the state tax appeal board is not reviewed by a district court, it is final and binding for subsequent tax years unless there is a change in the property itself or circumstances surrounding the property which affects its value. Statutory reappraisal by the department of revenue pursuant to 15-7-111, MCA is a circumstance affecting the value of real property and improvements thereon.

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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 remain entered on the tax rolls of Cascade County by the assessor of that county at the 1996 tax year value of \$665,809 for the

improvements as determined by the Order of This Board in PT-1993-2565.

Dated this 24th of March, 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.