

BEFORE THE STATE TAX APPEAL BOARD
OF THE STATE OF MONTANA

ARLENE WALL)	
c/o MICHAEL WALL	)	DOCKET NO.: PT-1997-10
)	
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>
)	
)	
)	
MICHAEL WALL	)	DOCKET NO.: PT-1997-11
)	
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 appeals were heard on the 17th day of June, 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 notices of the hearings were given as required by law. The taxpayers, represented by John Wall and Kevin Wall, presented testimony in support of the appeals. The Department of Revenue (DOR), represented by Don Blatt,

appraiser, presented testimony in opposition to the appeals.

Testimony was presented, exhibits were received and, upon the receipt of a post-hearing submission from the DOR and the response from the taxpayer, 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 and of the time and place of the hearings. All parties were afforded the opportunity to present evidence, oral and documentary.

2. The property involved in the appeals is described as follows:

PT-1997-10: Tracts 4 & 5 and part of Tract 1 of Tract 2 and improvements located thereon, Lewis & Clark County, State of Montana (Geo Code #05-1888-20-2-17-18-0000).

PT-1997-11: Tract 8, Certificate of Survey #506631 and improvements located thereon, Lewis & Clark County, State of Montana (Geo Code #05-1888-20-2-04-35-0000).

3. For the 1997 tax year, the DOR appraised the subject property at values of:

PT-1997-10: \$523,000 for the land and \$1,100,100 for the improvements.

PT-1997-11: \$392,043 for the land and \$93,800 for the improvements.

4. The taxpayers appealed to the Lewis and Clark County Tax Appeal Board on September 16, 1997 requesting values of:

PT-1997-10: \$191,520 for the land and \$800,000 for the improvements.

PT-1997-11: \$196,020 for the land and improvements combined.

5. The county board denied the appeals on October 23, 1997, stating:

PT-1997-10: Disapproved, Board felt fair market value set by DOR.

PT-1997-11: Disapproved, Board felt fair market value set by DOR.

6. On November 10, 1997 the taxpayers appealed those decisions to this Board stating:

PT-1997-10: L & C TAB did not give due consideration.

PT-1997-11: L & C TAB didn't seem to consider ground within less than 500 is appraised at less than [] this amount.(sic).

7. The subject parcels are adjacent and contiguous.

8. The subject parcels are the Power Townsend

Hardware/Lumber Yard which are located within the Northgate Shopping Center.

9. The Board requested from the DOR through a post-hearing submission the value indication of the PT-1997-10, utilizing the "Income Approach".

10. The DOR's post-hearing submission was submitted on June 22, 1998.

11. The taxpayer did not responded to the post-hearing submission.

TAXPAYERS' CONTENTIONS

The land value the DOR has placed on the subject property is essentially the same as the Hastings property on a price per square foot basis. The Hastings property is adjacent to the subject but has frontage on Montana Avenue; whereas, the subject property is set back off of Montana Avenue. Mr. Wall testified the property value for the land should be in the range of \$2.00 per square foot. The DOR has not considered the size of the subject property in its value determination.

The only testimony the taxpayer presented with regards to the subject improvements is that the property is overvalued.

DOR'S CONTENTIONS

The DOR has identified the subject neighborhood as 206-A which recognizes sales of properties along Montana Avenue, Custer Avenue, and Cedar Avenue. Mr Blatt testified the land is valued as follows:

PT-1997-10	1st 28,000 SF @ \$5.00 SF = \$140,000
	<u>Balance - 95,750 SF @ \$4.00 SF = \$383,000</u>
	123,750 SF \$523,000

PT-1997-11 130,681 SF @ \$3.00 SF = \$392,043

Mr. Blatt testified the property identified as PT-1997-11 is valued at the lower price per square foot of \$3.00 since access is provided across the property identified as PT-1997-10

The DOR presented an exhibit (exhibit E) listing twelve vacant land sales, along with a map (exhibit D) identifying the respective locations. In summary, exhibit E illustrates the following:

Base Size - 28,000	Monthly Rate of Change - .7054%
Base Rate - \$5.23	Adjustment Rate - \$4.22

<u>Sale #</u>	<u>Sale Date</u>	<u>Sale Price</u>	<u>Area (SF)</u>	<u>\$/SF</u>
# 1	10/93	\$140,000	43,212	\$3.24
# 2	4/92	\$ 55,000	24,171	\$2.28
# 3	3/95	\$ 30,000	7,449	\$4.03
# 4	6/94	\$210,000	33,250	\$6.32
# 5	2/92	\$120,000	24,030	\$4.99
# 6	9/93	\$160,000	27,897	\$5.74
# 7	7/94	\$ 55,000	11,573	\$4.75
# 8	12/94	\$144,790	21,000	\$6.89
# 9	6/92	\$350,000	103,385	\$3.39
#10	9/92	\$ 97,860	21,000	\$4.66
#11	3/92	\$ 85,000	21,000	\$4.05
#12	6/91	\$ 60,000	14,000	\$4.29

Mr. Blatt testified that the sales presented in exhibit E, have been adjusted for time to reflect a value as of 1/1/96. Mr. Blatt testified the only size adjustment recognized is for the area which exceeds 28,000 square feet and is valued at \$4.00 per square foot (PT-1997-10).

Mr. Blatt testified the reason these two parcels are not considered as one property and valued as one property, is due to the separate ownerships; PT-1997-10 - Arlene Wall, c/o Michael Wall and PT-1997-11 - Michael Wall. Mr. Blatt stated further, if he were to appraise both properties as one, the value indication would be higher. The adjacent parcel (PT-1997-11) would be valued at \$4.00 per square foot, rather than the current \$3.00 per square foot.

Mr. Blatt testified the main structure has been priced as consisting entirely of concrete block construction.

Mr. Blatt testified a value from the [income approach] was generated for PT-1997-10, but this property did not fit the warehouse model; therefore, the value determination for the subject property was established from the cost approach. As part of the post-hearing submission, Mr. Blatt supplied the Board with photos and a portion of the property record card for those warehouse properties in which the income

approach was used. Mr. Blatt's accompanying letter states, "...I have also submitted some warehouses that are typical for the model I developed. These warehouses were valued using the income approach. I would like to stress that the income model I developed was not intended for the valuation of buildings like Power Townsend."

The DOR's testimony and the property record cards (exhibit A, pgs. 2-10 - PT-1997-10 & exhibit A, pgs. 2-6 - PT-1997-11) summarized, illustrate the following:

PT-1997-10

Card #1

Land Data

28,000 SF @ \$5.00 SF = \$140,000
95,750 SF @ \$4.00 SF = \$383,000
<hr/>
123,750 SF \$523,000

Building Data

Year Built - 1978: Year Remodeled - 1992: Effective Age - 1989

Structure Type - 398 - Warehouse

Grade - Fair Plus

Use Type - Warehouse - 45,880 square feet

Use Type - Multi-use office mezzanine - 1,860 square feet

Physical Condition - Good

Functional Utility - Good

Percent Good - 83%

Building Other Features - Attached Improvements

CP5 - canopy roof - low cost: 2' x 155'

CP6 - canopy roof - average cost: 1,656' x 1' x 2

SS1 - Wet Sprinkler System

RT2 - Detached masonry/concrete deck

RT6 - Stoop or terrace

Other Buildings & Yard Improvements

PA1 - Asphalt paving - 1,710 square feet

Year built - 1993

Physical condition - good; functional utility - good

Percent good - 85%

PA1 - Asphalt paving - 65,210 square feet

Year built - 1978
 Physical condition - average; functional utility - average
 Percent good - 50%
 PA2 - Concrete paving - 632 square feet
 Year built - 1978
 Physical condition - average; functional utility - average
 Percent good - 50%
 RF7 - Ornamental iron fence
 Year built - 1993
 Physical condition - good; functional utility - good
 Percent good - 91%

Land Value	\$ 523,000
Total Building Value	<u>\$1,075,900</u>
Total Adjusted	<u>\$1,598,900</u>

Card #2

Building Data

Year Built - 1988: Effective Age - 1988
 Structure Type - 398 - Warehouse
 Grade - Low
 Use Type - Warehouse - 1,660 square feet
 Physical Condition - Good
 Functional Utility - Average
 Percent Good - 80%

Total Building Value \$ 24,200

Overall Total \$1,623,100

Mr. Blatt testified the subject property was extensively remodeled in 1992, and this remodel prompted a modification of the physical condition and functional utility to a "4" or a "good" indication. This indication determines the amount of depreciation applied to the improvements.

PT-1997-11

Card #1

Land Data

130,000 SF @ \$3.00 SF = \$392,043

Other Buildings & Yard Improvements

PA1 - Asphalt paving - 54,600 square feet
Year built - 1993
Physical condition - good; functional utility - good
Percent good - 85%

RF1 - Chain link fence - 6 x 1099
Year built - 1993
Physical condition - good; functional utility - good
Percent good - 88%

LT4 - Light, incandescent, pole & bracket - 4 each
Year built - 1993
Physical condition - good; functional utility - good
Percent good - 88%

Property under construction - \$25,000

Land Value	\$394,043
Total Building Value	<u>\$ 93,800</u>
Total Adjusted	\$485,843

Mr. Blatt testified the [Economic Condition Factor] (ECF) for all commercial properties in Lewis and Clark County is 105%.

DISCUSSION

The taxpayer testified that a property value for the subject parcels should be approximately \$2.00 per square foot.

The taxpayer provided the Board with no evidence to support this land value indication.

Mr. Blatt testified he would have to increase the value of the land if the two Power Townsend parcels were combined. The parcels may have separate legal descriptions and the recorded ownerships may not be identical, but the use of the parcels are consistent and both are an integral part of Power Townsend.

The DOR presented the Board with twelve vacant land sales (exhibit E), but only one sale, #9, (103,385 SF) can actually be considered somewhat similar to the subject with respect to size. The DOR presented six vacant land sales in an appeal from the prior appraisal cycle (John A. Wall & Roy Hudson v. DOR, PT-1992-225). The property in that appeal is not the subject parcel(s), but is located within the Northgate Shopping Center. The sales presented in that appeal are described in summary as follows:

<u>Sale #</u>	<u>Sale Date</u>	<u>Sale Price</u>	<u>Area (SF)</u>	<u>\$/SF</u>
# 1	3/85	\$244,600	45,380	\$5.39
# 2	1/86	\$ 50,000	12,697	\$3.94
# 3	7/88	\$400,560	103,237	\$3.88
# 4	6/92	\$350,000	103,237	\$3.39
# 5	9/93	\$160,000	27,897	\$5.74
# 6	12/92	\$120,000	24,030	\$4.99

(emphasis added)

Sales #3 and #4 are paired sales: the same property that has sold twice. This property is also sale #9, that the DOR presented in the subject appeals. This property sold in 1988 for \$3.88 per square foot and sold again in 1992 for \$3.39 per square foot. The latter indicates a decline of 12.6% or .27% per month. The DOR has presented what could be considered a sufficient number of sales to establish a value for smaller properties. The Board asked questions regarding sales of large parcels, i.e. Shopko and Walmart. Mr. Blatt responded to the

Board: "You would raise your eyebrows at the price per square foot". It's difficult to understand why the DOR would exclude these sales if, in fact, they would offer support for its value determination.

It is the Board's opinion, based on the land sales (exhibit E) and the DOR's testimony, these sales are not truly comparable; furthermore, there has been no due consideration in adjusting for size. In the previous appraisal cycle, the DOR appraised property in this neighborhood at \$3.00 per square foot for the first 46,000 square feet and any excess land at \$1.50 per square foot. (John A. Wall & Roy Hudson v. DOR, PT-1993-225). The DOR testified that, for the current cycle, the first 28,000 square feet are valued at \$5.00 per square foot and any excess land is valued at \$4.00 per square foot (PT-1997-10). Mr. Blatt stated he was unsure as to how the base size was determined; whether it is computer generated or an individual appraisers determination. The average size, as illustrated on exhibit E, is 29,991 square feet. It is the Board's opinion that the subject property does not fit this base size concept, especially since the main structure encompasses approximately 46,000 square feet of the entire site. Based on the evidence and testimony, the Board notes

that there has been increased commercial activity in the area of the subject property. This increased activity should aid the DOR in its search for comparable property transactions to develop values for larger tracts such as the subject. It is the Board's opinion the proper values for the subject parcels are as follows:

PT-1997-10:	123,750 SF @ \$3.50 SF = \$433,125
PT-1997-11:	130,681 SF @ \$3,00 SF = \$392,043

The total value for the two parcels in the previous cycle was \$519,647. The total value for the two parcels as determined by this Board is \$825,168. This reflects an increase in market value of 59%.

From the testimony it was discovered that the main structure is frame and concrete block construction. The DOR has classified the entire structure as block construction. Mr. Blatt stated this correction could easily be made. Other changes to be made to the property record cards based on the evidence and testimony are:

PT-1997-10

- Change the functional utility of the structure from a good (4) to a average (3).
- Remove canopy (CP5) along office mezzanine. This canopy is not present.

- Remove canopy (CP6) along east and west sides of the structure. The photos (exhibit C) of the structure indicates this is an extension of the roof system.
- Change the physical and functional utility of the paving (PA1) from a good (4) to a average (3).
- Change the physical and functional utility of the fence (RF7) from a good (4) to a average (3).

PT-1997-11

- Change the physical and functional utility of the paving (PA1) from a good (4) to a average (3).
- Change the physical and functional utility of the fence (RF1) from a good (4) to a average (3).
- Change the physical and functional utility of the lights (LT4) from a good (4) to a average (3).

The DOR modified the cost approach by an ECF of 105%.

The Montana Appraisal Manual, 47-2, defines the economic condition factor:

The economic condition factor is a component of depreciation or market adjustment that is usually applied after normal depreciation. It is normally 1.00 (100%) for the majority of properties where the cost index has been properly established and the depreciation schedules have been adequately calibrated.

It has a role in representing the effects of the economic climate on unique properties in a boom or bust economy. It can affect individual properties, or it can affect a whole class of properties. In a boom economy, market demand can force market prices above actual construction costs, with both new houses and used houses selling well in excess of stabilized construction costs.
(emphasis applied)

The DOR provided no support for the application of an "Economic Condition Factor" (ECF).

The Board requested the value determination for the subject property (PT-1997-10) from the income approach. The DOR's post-hearing submission illustrated a income value of \$1,259,900. Mr. Blatt's comment that the Power Townsend property does not fit the DOR warehouse model is substantiated by the accompanying photos of those properties for which the model was developed; therefore, it is the Board's opinion, defaulting to the cost approach to value was appropriate.

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. The appeals of the taxpayers are hereby granted in part and denied in part and the decisions of the Lewis and Clark County Tax Appeal Board are reversed.

ORDER

IT IS THEREFORE ORDERED by the State Tax Appeal Board of the State of Montana that the Department of Revenue shall make the following changes to the property record card for the

subject property and implement the market value generated by CAMAS for 1997:

PT-1997-10

- Correct the floor area of the frame and block construction.
- Land to be valued at \$3.50 SF for a total value of \$433,125.
- Change the functional utility of the structure from a good (4) to a average (3).
- Remove canopy (CP5) along office mezzanine. This canopy is not present.
- Remove canopy (CP6) along east and west sides of the structure. The photo of the structure indicates this is an extension of the roof system.
- Change the physical and functional utility of the paving (PA1) from a good (4) to a average (3).
- Change the physical and functional utility of the fence (RF7) from a good (4) to a average (3).
- Remove the [Economic Condition Factor] of 105%.

PT-1997-11

- Change the physical and functional utility of the paving (PA1) from a good (4) to a average (3).
- Change the physical and functional utility of the fence (RF1) from a good (4) to a average (3).
- Change the physical and functional utility of the lights (LT4) from a good (4) to a average (3).
- Remove the [Economic Condition Factor] of 105%.

The decision of the Lewis and Clark County Tax Appeal Board is hereby reversed.

Dated this 20th day of July, 1998.

BY ORDER OF THE
STATE TAX APPEAL BOARD

PATRICK E. MCKELVEY, Chairman

(S E A L)

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.