

BEFORE THE STATE TAX APPEAL BOARD
OF THE STATE OF MONTANA

THE DEPARTMENT OF REVENUE)
OF THE STATE OF MONTANA,) DOCKET NO.: PT-2003-125
)
Appellant,) FACTUAL BACKGROUND,
) CONCLUSIONS OF LAW,
-vs-) ORDER and OPPORTUNITY
) FOR JUDICIAL REVIEW
POPELKA ENTERPRISES, LLC)
)
Respondent.)

The above-entitled appeal was heard on October 27, 2004, in Billings, Montana, in accordance with an order of the State Tax Appeal Board of the State of Montana (Board). The notice of the hearing was duly given as required by law. The taxpayer, Popelka Enterprises LLC, is a limited liability corporation which was represented at the hearing by Mr. Robert Popelka, owner, and Mr. Chuck Morgan, independent property specialist. The Department of Revenue (DOR), was represented by Appraiser Vicki Nelson and assisted by Sheri Dede, Appraisal Manager for the DOR.

The duty of this Board is to determine the appropriate market value for the property based on a preponderance of the evidence. By statute (15-2-301, MCA) this Board may affirm, reverse or modify any decision rendered by the

county tax appeal board. Testimony was taken from both the taxpayer and the Department of Revenue, and exhibits from both parties were received.

This Board modifies the decision of the Yellowstone County Tax Appeal Board and establishes a value of \$1,531,700 on the property as of the lien date of January 1, 2003.

FACTUAL BACKGROUND

1. Due, proper, and sufficient notice was given of this matter, the hearing hereon, and of the time and place of the hearing. All parties were afforded opportunity to present evidence, oral and documentary.
2. The subject property is a commercial shopping center with multiple tenants located on the main commercial street of Billings Heights and more particularly described as follows:

Lot One, Block One of the Four Seasons Subdivision of Billings, Yellowstone County, State of Montana. (Physical address: 1125 Main Street, Billings Heights; Geocode #: 1033-22-1-04-17-0000).
3. For tax year 2003, the Department of Revenue initially appraised the subject land and improvements using an income approach to value at \$1,531,700.

4. The Taxpayer filed an AB-26 requesting informal review of the assessment and certain revisions were made, as discussed further in this opinion, but the total value remained the same.
5. The taxpayer filed an appeal with the Yellowstone County Tax Appeal Board on December 23, 2003, requesting the prior cycle value of \$1,107,600 on the property for both land and improvements, stating the following reasons for appeal:

Appraised too high.

6. In its March 17, 2004 decision, the county board granted the taxpayer's appeal, stating:

The Board agrees with the appellant and places the total appraised value on the subject property at \$1,107,600.

7. The Department of Revenue then appealed the decision to this Board on December 15, 2003, citing the following reason for appeal:

The nature of the proof adduced at the hearing was insufficient from a factual and legal standpoint to support the Board's decision.

DOR'S CONTENTIONS

The taxpayer initially refused to provide income and expense information to the department so the DOR appraisal

was conducted without such data. The income approach to value, which is typically used in commercial properties, was based on composite figures compiled from the department's survey of Billings area commercial properties.

DOR Exhibit E shows the values that were employed by the department in constructing an income approach to value for the subject property. The critical values developed in the analysis are these: \$8 per square foot rental rate applied to the 34,496 sq. feet of the property for a total potential gross income of \$275,968. After an adjustment for vacancy (10%) and expenses of \$81,411 (approximately 33%) there remains a total net income of \$166,960. The capitalization rate of 10.9% (Exhibits I and J) were then applied to the net income to arrive at a value indication for the property of \$1,531,700.

Since the income approach to value does not distinguish between land and improvements, it is necessary to "back out" the value of the land for assessment purposes. DOR Exhibit B is a regression analysis of commercial land sales in the Billings Heights: the first is an analysis of 5 commercial land sales from the Billings Heights area but not on Main Street; the second is an analysis of 11 land sales on Main

Street which is the location with the predominant commercial activity in Billings Heights. This computer analysis shows that the "base rate" value for commercial property in the Heights was \$1.60 per square foot for the first 20,000 square feet, and \$1.30 for the remainder of the property. Due to its location on Main Street, an "influence factor" of 275% was then applied to the subject property, resulting in a total land value of \$1,155,331.

After the taxpayer filed an AB-26 petition, DOR undertook a review of the land value. Taxpayer pointed out that the real property was a long, oblong lot with only the front portion benefiting from its proximity to Main Street. In agreeing with the taxpayer the department reduced the "Main Street influence" by 50% (saying it applied to only the front half of the lot) and calculated the new value of the land at \$575,564. DOR Exhibit H shows a diagram of the lot compared to other commercial properties on Main Street, and page three of the exhibit shows the calculation done to arrive at the new value.

After the AB-26 process the values on the subject property were as follows: land, \$575,564; improvements, \$956,136; total value for subject property: \$1,531,700.

These are the values that were considered by the Yellowstone County Tax Appeal Board.

TAXPAYER'S CONTENTIONS

Mr. Popelka appeared on behalf of his business entity, Popelka Enterprises LLC, and was assisted by Mr. Chuck Morgan of Billings. Mr. Popelka stated that he feels that his shopping mall is unfairly being compared by DOR to the "hot-shot" new stores in the Heights, namely Target and Wal-mart. The addition of these new stores has put him in a difficult competitive position with these newer facilities, and some of his tenants want to be nearer to the area where the increased commercial activity is taking place. Mr. Popelka states that it is a much more difficult environment for him to attract and maintain business for his mall and he is in a tough market for developing his business.

Mr. Popelka stated that the DOR can come up with tables, CALP models, and cap rates to prove just about anything, but he has to deal on the ground and use "common sense". His "common sense" tells him that his business has suffered and has not gained in value the way that DOR says that it has.

Mr. Popelka and Mr. Morgan state that they are requesting the value from the prior cycle which is

\$1,107,600. They state that with the competitive climate in Billings Heights, the shopping center is not worth any more than at the beginning of the period in 1997 and may in fact be worth less. They emphatically reject the new value derived by DOR and state that there is "no way" that the property could have increased in value by over \$400,000 during the six years of the cycle.

BOARD'S DISCUSSION

This Board must have a factual basis for any decision that it renders; anything less is merely conjecture and individual opinion and would be found infirm by a reviewing court. Thus, this Board sorts through the presentations that are made and tries to evaluate the factual information that is presented.

In this instance the Department of Revenue has submitted a number of exhibits to assist the Board in determining whether the values presented to it are valid indicators of market value. Exhibit E is a detailed presentation of the calculation of the income approach to market value employed by the department in this instance. While one might quibble with some of the figures used in the

model, it certainly removes any mystery in how the department arrived at the value it is presenting. Exhibit G, which is a confidential document, is a computer-assisted land pricing model (CALP). It shows the sales prices of different commercial properties that were used to obtain the land values used by DOR. It further delineates in a separate document (Page 2 of the exhibit) the influence factor that was used to value Main Street-Billings Heights commercial property. As noted earlier in this opinion, during the AB-26 process the "influence factor" was reduced due to the fact that taxpayer's large lot was not entirely subject to the Main Street influence. Exhibit H shows the taxpayer's lot along with other commercial properties on Main Street-Billings Heights and page 3 of the exhibit contains the recalculation of the land value for the AB-26. Exhibit I, another confidential document, presents the results of a survey of commercial property in the Billings area. The median figures from this survey were extracted to use in the income model and to develop the capitalization rate. Finally the Board would note that Exhibit J, another confidential document, was submitted. This document analyzes the sale of eleven different commercial properties in Yellowstone County

during the relevant period and supports the capitalization rate used by the department in the income approach to value used on the taxpayer's property.

In this Board's review of the entire evidence adduced at the hearing, we are satisfied that the Department of Revenue has met its burden of supporting and validating the values it has used for the subject property.

CONCLUSION OF LAW

1. This Board has jurisdiction of the matter under appeal pursuant Section 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 appeal of the Department of Revenue is upheld and the decision of the Yellowstone County Tax Appeal Board is accordingly modified.

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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 local Department of Revenue office at a value of \$1,531,700 for tax year 2003, with \$575,564 constituting the value of the land, and \$956,136 constituting the value of the improvements. The decision of the Yellowstone County Tax Appeal Board is accordingly modified.

Dated this 14th day of January, 2005.

BY ORDER OF THE
STATE TAX APPEAL BOARD

(S E A L)

GREGORY A. THORNQUIST, Chairman

JERE ANN NELSON, Member

JOE R. ROBERTS, 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 14th day of January, 2005, 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:

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Mr. Elwood Hannah, Chairman
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