

BEFORE THE STATE TAX APPEAL BOARD
OF THE STATE OF MONTANA

STANLEY FAMILY LIMITED
PARTNERSHIP,

Appellant,

-vs-

THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA,

Respondent.

)
)
) DOCKET NO.: PT-2010-38
)
)

) FACTUAL BACKGROUND,
) CONCLUSIONS OF LAW,
) ORDER and OPPORTUNITY
) FOR JUDICIAL REVIEW
)
)
)

Statement of Case

Stanley Family Limited Partnership (Taxpayer) appealed a decision of the Flathead County Tax Appeal Board (CTAB) relating to the Department of Revenue's (DOR) valuation of their property identified as the improvements located upon 4.992 acres, Section 12, Township 28 North, Range 22 West, and the improvements located thereon, Flathead County, State of Montana. The Taxpayers argue the DOR overvalued the property for tax purposes, and they seek a reduction in value assigned by the DOR. At the State Tax Appeal Board (Board) hearing held on October 30, 2012, the Taxpayers were represented by Attorney Thane Johnson, Appraiser Don E. McBurney and Roy Stanley, property owner, providing testimony and evidence in support of the appeal. The DOR, represented by Amanda Myers, Tax Counsel, Regional Manager Scott Williams and Appraisers Michael Forster and Todd Schmidt, presented testimony and evidence in opposition to the appeal.

The Board having fully considered the testimony, exhibits and all matters presented, finds and concludes the following:

Issue

The issue before this Board is whether the Department of Revenue erred in valuing the subject property for tax purposes for tax year 2010.

Summary

Stanley Family Limited Partnership is the Taxpayer in this proceeding and, therefore, has the burden of proof. Based on a preponderance of the evidence, the Board upholds the decision of the Flathead County Tax Appeal Board.

Evidence Presented

1. Due, proper and sufficient notice was given of this matter and of the time and place of the hearing. All parties were afforded opportunity to present evidence, verbal and documentary.
2. The subject improvements are located upon 4.992 acres with the following legal description:

Improvements only located on Lot 1, Section 12, Township 28 North, Range 22 West, Flathead County, State of Montana. (DOR Exh.C, Appeal Form.)
3. For tax year 2010, after informal review of the property, the DOR appraised the subject land at a value of \$1,328,230 and an improvement value of \$752,670, for a total of \$2,080,900, which was upheld by the Flathead County Tax Appeal Board. The Taxpayer is appealing the value of the building, but the value of the land is not in contention. (DOR Exh. C, Appeal Form.)
4. The DOR initially valued the subject property at a land value of \$1,328,230 and a building value of \$1,327,270. The Taxpayer filed a Request for Informal

Review (AB-26) on April 27, 2010, asking for an informal review meeting because:

The status of this real estate has changed. It is no longer under lease. It no longer produces income. The owner has been trying to lease it for longer than a year but without success. This reduction, of course, is a form of obsolescence." (DOR Exh. B.)

6. After review, the DOR lowered the value of the building (from \$1,327,270 to \$752,670) but left the value of the land at \$1,328,230 on August 18, 2011, stating:

Value as of July 1, 2008 was reduced to \$2,080,900 based on review of this property and all relevant financial and market data. No weight was put into the 2011 asking price of \$3,750,000. (DOR Exh. B.)

7. The Taxpayer filed an appeal with the Flathead CTAB on September 21, 2011 asking for an improvement value of \$300,000. The appeal was heard on November 17, 2011. The CTAB made no change in the DOR values. (DOR Exh. A, Appeal Form.)

8. The Taxpayer appealed to this Board on December 21, 2011, stating:

The Board erred in failing to adjust the value of the property to take into account market conditions and the declining condition of the property and improvements. (DOR Exh. A, Appeal Form.)

10. After notice, this Board held a hearing, and evidence and testimony was presented by both parties.

11. An appraisal on the subject property was conducted by Don McBurney, and dated March 2006. The appraisal valued the subject property at \$2,117,500, using a cost, income and sales methodology to calculate a value. (DOR Exh. F.)

12. The appraisal referenced a current lease on the subject property, which he used to develop an income method. The lease and its extension were submitted as Exhibits 1 & 2.
13. The appraisal stated that the lease was in place through December 31, 2009. (DOR Exh. F.)
14. The lease itself was a "triple net" lease (the tenant pays all taxes, insurance and maintenance on the property) with a monthly rental amount to the landlord as well as a "consultant's fee" clause providing significant additional benefits to the landlord. (Exhs. 1 & 2.)
15. The Taxpayer testified that the building was vacant since 2006, but did not indicate when or if the lease payments ceased.
16. The Taxpayer referenced a preliminary building analysis to demonstrate that the building was empty at the time of assessment. The preliminary building analysis, however, has conflicting dates and indicated that the inspection took place on April 28, 2008. The building analysis report is not signed. (Exh. 3.)
17. Don McBurney, the appraiser who performed the 2006 appraisal, testified that he believed the building was more appropriately valued at \$300,000 as of 2006 and as of 2008, which is substantially different than the \$2,117,500 total value of land and building in the original appraisal. This valuation was also stated in a letter sent to the owners and the DOR. (DOR Exh. G.)
18. Mr. McBurney testified that he felt there was a lack of durability to the income stream, and excessive obsolescence, and thus the initial valuation was incorrect.
19. The DOR testified that they reviewed the appraisal, the income and expenses for the property and determined that the appropriate valuation was

\$2,080,900: \$752,670 for the building and \$1,328,230 for the land, though the DOR used an overall income methodology for property valuation.

20. The DOR used the income and expenditures provided by the Taxpayer, and calculated the value using the DOR income and expense system. The capitalization rate was 8.22% and the DOR allowed for a vacancy factor. (Forster Testimony.)

21. No evidence was submitted relating to the average rental income that might have been available to the Taxpayer in 2008, at the time of the assessment, if there was no lease on the building. There was no indication that the lessee failed to comply with the rental payments required by the lease through the end of 2009.

22. The DOR testified that the property was still being used for marketing and storing used vehicles. (Forster Testimony.)

23. The Taxpayer did testify that he tried to lease or sell the property after 2006.

Principles of Law

1. The State Tax Appeal Board has jurisdiction over this matter. (§15-2-301, MCA.)
2. All taxable property must be assessed at 100% of its market value except as otherwise provided. (§15-8-111, MCA.)
3. Market value is the value at which property would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or to sell and both having reasonable knowledge of relevant facts. (§15-8-111(2)(a), MCA.)
4. The appraised value supported by the most defensible valuation information serves as the value for ad valorem tax purposes. (ARM 42.18.110(12).)

5. The state tax appeal board must give an administrative rule full effect unless the board finds a rule arbitrary, capricious, or otherwise unlawful. (§15-2-301(4), MCA.)

Board Discussion and Conclusions of Law

The Board must determine, based on a preponderance of the evidence, whether the DOR set an appropriate valuation for the subject improvement for tax year 2010.

As a general rule, the appraisal of the Department of Revenue is presumed to be correct and the Taxpayer must overcome this presumption. The Department of Revenue should, however, bear a certain burden of providing documented evidence to support its assessed values. *Farmers Union Cent. Exch. v. Department of Revenue*, 272 Mont. 471, 901 P.2d 561, 564 (1995); *Western Airlines, Inc., v. Michunovich*, 149 Mont. 347, 353, 428, P. 2d, 3, 7, cert. denied 389 U.S. 952, 19 L. Ed. 2d 363, 88 S. Ct. 336 (1967).

The Board reviewed whether the DOR valued the subject improvements correctly. The DOR is charged with appraising the property at full market value pursuant to §15-8-111, MCA. The most appropriate way to appraise property is to use the actual sale of the property or to extract data from the market, such as other sales of comparable properties. For commercial property, it is also possible to develop a valuation based on an income stream for the subject property.

In this instance, the Taxpayer's appraiser argues that, with the benefit of hindsight, he was too optimistic in his 2006 appraisal of the subject property. He urges this Board to lower the value of the building at issue to \$300,000. He essentially argued that the value was too high both for 2006 (the appraisal year) and 2008 (the assessment value date.) He testified that he could justify such a

value by analyzing sales that he used in his appraisal. He did not provide a revised appraisal for either 2006 or 2008.

The DOR argues that it properly valued the property by using the Taxpayer's income and expense data, and applying it to the traditional income approach calculations used by the DOR. The DOR appraiser testified that the value was appropriate because the lease had an additional two years from the assessment date, there was no indication that the tenant failed to comply with the payment requirements of the lease, and there was no suggestion at that time that the building would not be re-rented.

At issue in this matter is a determination of value as of the assessment date of January, 2008. At that time, a long-term triple-net lease, with both rent and additional benefits, was in place for the subject property. The lease had two years left, but the tenant had likely moved out. There is no evidence of the rental market pricing as of the assessment date. The Taxpayer, however, did get a reduction in his property value when the DOR used his current rental income and expenditures. The Taxpayer argues that this reduction was insufficient when the lease was slated to end in two years, the property was already vacant, and he testified that he had attempted to lease or sell the property.

We find that the DOR determined a proper value for the subject property. While there was some indication that the property was vacant sometime between 2006 and 2008, there was no indication that the tenant was not complying with its contractual requirement to pay its rental income. We find that the Taxpayer failed to provide sufficient evidence for this Board to determine that a market value reduction is proper. There is no indication that the DOR income calculations are based on the Taxpayer's triple-net lease, which had the advantage of covering significant tax (approximately \$38,000 per

year), insurance and maintenance costs, with a consultant's fee (\$60,000 per year) in addition to rent. Rather, it appears the DOR used its single capitalization rate and applied it only to the Taxpayer's stated rent and expenses.

The Taxpayer argues that there was little "durability" to the lease, and the Taxpayer thus should receive a reduction in value. We note that the lease extended two years past the January 2008 assessment date. We find that the lease was sufficiently long enough for the DOR value to be accurate as of the assessment date.

We would also note that Flathead County Tax Appeal Board reviewed the subject property, and upheld the DOR value. The local tax appeal boards are uniquely suited to determine whether circumstances require a reduction in valuation, and in this matter, the Board concluded that they did not. We see no evidence that their determination was incorrect.


Thus it is the opinion of this Board that the assessed value set by the DOR is correct and the decision of the Flathead County Tax Appeal Board is upheld.

Order

IT IS THEREFORE ORDERED by the State Tax Appeal Board of the State of Montana that the subject property value shall be entered on the tax rolls of Flathead County at a total 2010 tax year value of \$2,080,900 (an improvement value of \$752,670 and a land value of \$1,328,230) as determined by the Department of Revenue and affirmed by the Flathead County Tax Appeal Board.

Dated this 3rd of December, 2012.

BY ORDER OF THE
STATE TAX APPEAL BOARD


KAREN E. POWELL, Chairwoman


SAMANTHA SANCHEZ, Member


KELLY FLAHERTY-SETTLE, Member

(SEAL)

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 3rd day of December, 2012, 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:

Thane Johnson
JOHNSON, BERG & SAXBY, PLLP
Attorneys at Law
P.O. Box 3038
Kalispell, Montana 59903-3038

U.S. Mail, postage prepaid
 E-Mail
 Telecopy
 Interoffice

Amanda Myers
Tax Counsel
Office of Legal Affairs
Department of Revenue
Mitchell Building
Helena, Montana 59620

U.S. Mail, postage prepaid
 E-Mail
 Telecopy
 Interoffice

Flathead County Appraisal Office
100 Financial Drive
Suite 210
Kalispell, Montana 59901

U.S. Mail, postage prepaid
 E-mail
 Telecopy
 Interoffice

Danene Thornton
Secretary
Flathead County Tax Appeal Board
800 South Main
Kalispell, Montana 59901

U.S. Mail, postage prepaid
 E-mail
 Telecopy
 Interoffice

Donna Eubank byja
DONNA EUBANK
Paralegal