

BEFORE THE STATE TAX APPEAL BOARD
OF THE STATE OF MONTANA

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ARTHUR R. and MARY C. VENDER, ) DOCKET NO.: PT-2003-37
)
    Appellants, ) FACTUAL BACKGROUND,
) CONCLUSIONS OF LAW,
    -vs- ) ORDER and OPPORTUNITY
) FOR JUDICIAL REVIEW
THE DEPARTMENT OF REVENUE )
OF THE STATE OF MONTANA, )
)
    Respondent. )
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The above-entitled appeal was heard on July 13, 2004, in Great Falls, 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, Arthur Vender, appeared on his own behalf. The Department of Revenue (DOR), represented by Appraiser Richard Dempsey, presented testimony in opposition to the appeal.

The duty of this Board is to determine the appropriate market value for the property based on a preponderance of the evidence. Testimony was taken from the taxpayer and the Department of Revenue produced exhibits and presented testimony.

The Board affirms the decision of the Cascade County Tax Appeal Board and the DOR value for the subject land.

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 described as follows:

Land only described as Lot 4, Block 413, Great Falls Original Townsite in the City of Great Falls at 514 2nd Avenue South, County of Cascade, State of Montana. (Assessor ID #: 0000222600).

3. For tax year 2003, the Department of Revenue appraised the subject land as commercial property with a value of \$35,770.

4. The taxpayer filed an appeal with the Cascade County Tax Appeal Board on August 16, 2003, requesting a land value of \$15,000, stating the following reasons for appeal:

Vacant lot next to mine was offered for sale at \$20,000. I offered \$15,000 and then backed out of offer before owner accepted. He was going to accept before I backed out of transaction.

5. In its December 8, 2003 decision, the county board denied the taxpayer's appeal, stating:

After hearing testimony and reviewing exhibits, the Board finds the land value of \$35,770 and the building value of \$42,400 accurately reflect the true market value of the property. This appeal is disapproved.

6. The taxpayer then appealed that decision to this Board on December 19, 2003, citing the following reason for appeal:

The State of Montana used improper land sales to calculate the value of the land. I was also threatened by a DOR representative, see attached letter.

TAXPAYER'S CONTENTIONS

Mr. Vender feels that the DOR has "over appraised" his commercial lot. He states that he has looked at other properties in the area and cites two examples where lower values were used by the DOR. The first is an adjoining piece of property, identical in size to his own lot, which he at one time sought to buy. Mr. Vender recounted that the lot was offered for sale by his neighbor at \$20,000; and that he made an offer on the lot for \$15,000 which he later withdrew. Mr. Vender stated that had he not withdrawn the offer it would have been accepted by the owner of the lot. He thus feels that \$15,000 is the proper value for his lot, not the \$35,770 as determined by the DOR.

The second valuation that Mr. Vender offers concerns some lots purchased by the City-County Health Department to construct a new building. He states that the \$100,000 price paid by the department for the adjoining lots actually included six lots, rather than three, making the "per lot" price \$16,667 per lot. He also stated that according to contemporary news accounts in the *Great Falls Tribune* the agency was forced to purchase an additional lot in order to provide sufficient off-street parking, and they they paid an above-market price of \$34,000 in order to be able to provide such parking and use the original lots as they desired.

The final issue raised by Mr. Vender concerns a discussion that he had with Mr. Pankratz, the Regional Supervisor of the DOR. According to Mr. Vender, Mr. Pankratz "threatened" him, by stating that if Mr. Vender were successful in his appeal of the land value, the DOR would simply increase his improvement value a similar amount, so that the final value would remain the same.

DOR'S CONTENTIONS

For the DOR, Mr. Rich Dempsey presented a series of exhibits in support of the subject land valuation. DOR Exhibit A is a copy of the property record card, showing that

the subject land is considered commercial property; is a standard city lot size of 50 by 150 feet for a total area of 7,500 square feet; and is valued at \$4.85 per square foot for a total land value of \$35,770.

DOR Exhibit B is a list of confidential vacant commercial land sales within the same area as taxpayer's property. The input of these values into a computer-based regression model produced the "base rate" of \$4.85 per square foot for the standard city lot size of 7,500. According to Mr. Dempsey this value was applied to all other commercial lots of similar size within the same area of Great Falls.

Mr. Dempsey addressed the issue of lots purchased by the City-County Health Department for its new building. Because of the taxpayer's testimony at the county hearing, Mr. Dempsey checked the records again and discovered that due to some recording errors, the agency had originally purchased five, not three, lots at their building site. He testified that he did not use the sales in the model (Ex. B) due to the fact that it was a multi-parcel sale, and that when he did run a test using the sales it reduced the reliability of the results. However, he testified, it did not reduce the values produced by the model, namely the \$4.85 square foot base

rate.

The third exhibit produced by the DOR, Exhibit C, is an abbreviated copy of the commercial zoning regulations in Great Falls, which shows that a "B-3" designation for "High Density Business" does not have a "set-back" requirement.

BOARD'S DISCUSSION

The Board finds that the DOR has satisfactorily demonstrated that its appraisal of the subject land was performed in accordance with statute and administrative rule. Substantial and compelling sales evidence was presented by the DOR in support of its value.

The taxpayer's testimony is primarily anecdotal and at one point relies upon recollection of a newspaper article from some indefinite point in the past. Mr. Vender produced no documentary evidence to substantiate or corroborate the matters which he testified to. While the Board has sympathy for the challenges a taxpayer has in presenting his case, it also has a duty to base its decision on objective and verifiable evidence.

In his testimony the taxpayer admitted that he bought the property, both land and improvements, for \$72,000 during the calendar year of 1999. Under the current appraisal, which

relates to the date of January 1, 2002, the combined land and improvement value of the subject property comes to \$78,170. This increase of 8% in value for the entire property from the purchase date in 1999 to the appraisal date of January 1, 2002, does not seem at all unreasonable.

Additionally, the review of vacant commercial land sales in "downtown" Great Falls, as presented in DOR's Exhibit B, shows that the value of \$4.85 per square foot, as used in the appraisal, is consistent with the treatment of like properties in the area.

After the hearing, and outside of the official record, the taxpayer submitted a copy of a letter from a zoning official of the City of Great Falls, stating that commercial lots in the city are still subject to off-street parking and landscaping requirements. This Board does not need to get into the details of zoning enforcement, and would expect that such matters would ultimately be reflected in the prices that are paid in the market. As noted above, the Board is satisfied that the DOR has shown through comparable sales that the values used in the taxpayer's property are justified and equitable.

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 appeal of the taxpayer is denied and the decision of the Cascade 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 Cascade County by the local Department of Revenue office at the land value of \$35,770 for tax year 2003, as determined by the DOR. The decision of the Cascade County Tax Appeal Board is affirmed.

Dated this 18th day of August 2004.

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 18th day of August, 2004, 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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Nick Lazanas
Chairperson
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