

BEFORE THE MONTANA TAX APPEAL BOARD

**FILED**

NOV 04 2016

Montana Tax Appeal Board

Jay and Deborah Getz,

*Appellant;*

v.

State of Montana,  
Department of Revenue,

*Respondent.*

CASE No: PT-2016-9

Findings of Fact,  
Conclusions of Law,  
Order, and  
Opportunity for Judicial Review

- 
1. Before the Board is Appellant Jay and Deborah Getzs' appeal from the Missoula County Tax Appeal Board's (CTAB) decision which (1) rejected Getzs' appeal for 2015 as untimely and (2) reduced by less than Getzs' requested amounts the Respondent State of Montana, Department of Revenue's valuation of Getzs' property at 2205 River Road, Missoula; geocode 04-2200-20-2-18-03-0000; legal description Cobban & Dinsmore's Orchard Homes #1, S20, T13 N, R19 W, Lot 27.

**ISSUE**

2. Whether Taxpayer timely filed his appeal of valuation for 2015, and whether DOR properly determined the true market value of the property.
3. Taxpayer argues that his business is not profitable and therefore should not be fully assessed. Taxpayer presented evidence and testimony that

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because he cannot use the upper floor of his office building, he should not be taxed on that property. Taxpayer disagrees with both DOR's appraisal and methods.

4. DOR argues that they applied uniform methods of valuation according to standard procedures and used the same methods for all similarly situated taxpayers to determine the value of the subject properties.

**FINDINGS OF FACT**

5. The Board conducted a hearing at its hearing room at 600 North Park Avenue, Helena at 1:00 p.m. on July 12, 2016 at which the following were present:
  - a. Jay Getz, self-represented taxpayer;
  - b. Elizabeth Roberts, counsel for DOR;
  - c. Helen Greenberg, lead Missoula appraiser, as witness for DOR.
6. The record includes all materials submitted to the county tax appeal board, the transcript of the hearing at the county tax appeal board, and additional materials submitted by the parties and entered into evidence.
7. Taxpayer appealed the timeliness of his tax year 2015 assessment as well as the values assessed on his property for the entire 2015-2016 appraisal cycle. Taxpayer requested a land value of \$181,914 and an improvement value of \$1,463,987. These amounts were reductions from the DOR assessed values of \$377,935 for the land and \$2,482,390 for the improvements.

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8. An initial 2015 value was determined by DOR to be \$2,860,885, then at the start of the MTAB hearing on July 12, 2016, DOR reduced the value of the property for 2016 to \$2,800,225.
9. Taxpayer appealed his initial assessment to the CTAB, which heard the appeal on January 6, 2016. The CTAB ruled that the tax year 2015 appeal was not timely. It then reduced the 2016 value of the 2<sup>nd</sup> floor office building from \$132,817 to \$19,922 (15% good) due to lack of access. After considering comparable storage unit values presented by the taxpayer, the Board reduced the value of the Taxpayer's storage units from \$1,758,447 to \$1,376,217. The CTAB found the total value of the land and all improvements to be \$2,365,759.

**Taxpayer**

10. Taxpayer testified that he missed the deadline for filing an informal review (AB-26) for 2015 because "...I made the mistake, and it was my error, of calling the office, Department of Revenue, and saying, you know, what am I supposed to do about this." Taxpayer met with DOR staff after the deadline had passed and had DOR Missoula lead appraiser Ms. Greenberg acknowledge by writing on his 2016 Assessment notice that he was in the process of appealing his valuation. Taxpayer submitted this document into evidence. (Ex. P-6.)
11. Taxpayer introduced a copy of the 2014 income tax returns for River Road Storage LLC showing a \$39,540 loss for the storage unit business during construction and while open for 112 days in 2014. (Ex. P1-A.)

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12. Taxpayer introduced 2015 income tax returns for River Road Storage LLC indicating a \$63,374 loss reflective of the storage unit business. (Ex. P1-B.)
13. Taxpayer introduced a one-page invoice from Carl Construction with a total amount due of \$1,463,987.38 for the project. That total amount was equivalent to the spreadsheet budget introduced earlier. (Ex. P13-F.) This document was admitted over DOR's objections that counsel could not question the author and that it was not a complete document, missing page two. Taxpayer testified that the document is dated March 20, 2015 and was created as a requirement of bank financing for the venture.
14. Taxpayer introduced the Stuckey appraisal report for the proposed project dated April 17, 2013. As part of its objection, DOR noted that the Stuckey appraisal in question was not within six-months of the January 1, 2014 lien date for the 2015-2016 appraisal cycle.
15. Taxpayer introduced a self-contained appraisal report cover letter as supporting documentation related to the value of the proposed business project. The four-page letter from appraiser Tom Stuckey dated April, 22, 2013 to Bank of Montana estimated the value of phase one of the project excluding land at \$1,920,000. (Ex. P2-C1.) The DOR had objected to its admission on foundation and on the basis that only the entire document should be allowed into evidence because Stuckey was not present to confirm its authenticity.
16. Taxpayer testified that the appraisal he offered as evidence was done prior to the start of project and required by the lender, but should be

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considered as evidence of market value. “These are done six months to a year prior to a project ever starting.” (MTAB Hrg. Transcr. 20:9-10.) This Board admitted the appraisal and has considered the information within it.

17. Taxpayer introduced a two-page portion of an October 30, 2013 income and expense analysis document intended for the lender based on rental occupancy or stabilization of 90%. These assumptions yielded a projected annual net profit after expenses of \$104,236 and a capitalized value of \$1,302,950. (Ex. P2-C2.) Taxpayer testified that these assumptions included income for proposed outside storage which was subsequently prohibited by Missoula County, reducing the income-based method value below that estimated in the exhibit.
18. Taxpayer also introduced his own method and results of valuing the subject property. At the CTAB hearing, Taxpayer estimated the per-acre taxes actually paid by other storage unit properties in Missoula County. Taxpayer testified he met with different business owners and managers in order to determine the number of storage units located on each property (Ex. P-3A.) This exhibit was allowed into evidence over the DOR’s objection that taxes paid were not directly relevant to finding market value of property. Taxpayer testified his method was a fairer comparison of similar properties than the method utilized by the DOR. Using his method, Taxpayer found that the value of his property was similar to the amount he paid for construction, \$1,348,315, thus corroborating his requested value.
19. Taxpayer introduced a copy of his 2016 Property Classification and Assessment notice from the DOR dated June 6, 2016 (Ex. P2-C2.) That

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document included a hand written note on the top initialed by Helen Greenberg stating, “appeal in process for 2016 HG.”

20. Taxpayer introduced a four-page letter from the Missoula County Development Office denying Taxpayer’s request for a zoning variance to allow him to rent the second floor of the office building as a commercial real estate business. Taxpayer introduced the letter to establish that the city had prohibited any use of the second floor. (MTAB Hrg. Transcr. 25:22-26:5; Ex. P-4A.)
21. Taxpayer initially testified that the second floor office could not be used for storage because the city denied his variance request and they had made him remove the stairway to the second floor before other construction could be completed. He further testified that the interior of the second floor is framed with interior dividing stud walls but has no electrical, plumbing, insulation or fire suppression. There is currently no direct access to the second floor.
22. Taxpayer testified that his general contractor advised that he could proceed with construction approval of the basic footprint design, then include the second floor office under county regulations and have changes approved “...as you go...” (MTAB Hrg. Transcr. 28:24.) His testimony was that when he presented the changes mid-construction, the city responded (post-annexation) that the second floor offices were too large to meet zoning exceptions as an accessory to the storage unit business. Taxpayer testified “I didn’t realize that we couldn’t do this.” (MTAB Hrg. Transcr. 29:12-13.)

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23. On cross-examination about why DOR's standardized cost of construction estimates exceeded the costs he paid for his project, Taxpayer testified that he paid close attention to the bidding process and required his general contractor to secure three bids for every aspect of construction, which resulted in the lowest possible cost for his project.
24. Also on cross-examination, Taxpayer testified that current zoning and the city would allow him to use the second story area for document storage or as two-bedroom residential apartments. (MTAB Hrg. Transcr. 36:23-37:7; 38:3-5.)
25. In response to questions from the Board, Taxpayer testified he believed he should not pay taxes on the full assessed value of the storage unit business until "...two years from now when we're at the levels that everybody thinks we should be at..." (MTAB Hrg. Transcr. 46:2-3.)

**Department of Revenue**

26. Department of Revenue offered the testimony of Missoula County lead appraiser Helen Greenberg, who was responsible for valuing the subject property. Greenberg testified that DOR policy is to use the cost approach to find value when a property contains mixed use of residential and commercial improvements. The justification for this practice is the difficulty of finding a proximate property with the same content and ratio of residential and commercial improvements that is truly comparable to the subject.
27. Greenberg testified that using a comparable market appraisal method would inconsistently value either or both residential and commercial properties. She testified that the department cannot use the market

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sales method to value a single property that is split between two uses. (MTAB Hrg. Transcr. 48:1-3.)

28. Greenberg testified that under the cost method of valuation, the current cost to build is calculated and then depreciation is subtracted to determine market value, this is known as replacement cost new less depreciation. The DOR uses uniform costs of construction obtained from Marshal and Swift cost tables of materials and construction, adjusted to reflect local materials costs.
29. DOR introduced Exhibit C, the 2016 property record card for the subject showing a total value of \$2,800,225.
30. DOR introduced Exhibit D, the commercial land valuation model used to value the 4.77 acres associated with the subject.
31. Greenberg prepared a cost summary document used to calculate costs of construction for each of the structures on the property. (Ex. E.) Greenberg testified that in applying the valuation software she reduced costs for the second floor office interior by two-thirds to account for it not being useable space. She testified that typically interior finish is valued at \$63.51 per square foot but that she reduced the value of the second floor interior of \$21.79 per square foot, similar to attic space, because it was not useable office space. (MTAB Hrg. Transcr. 51:1-2.)
32. When questioned by the Board about her ability to reduce the second floor value to zero, Greenberg testified that it would be inequitable to other taxpayers to value any portion of a new structure at zero as requested by Taxpayer.

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33. Greenberg testified that when valuing the land of the subject property she used the Missoula County commercial computerized land valuation model to find the typical value of commercial land calculated from actual recent sales of commercial land. After calculating that value, Greenberg then applied a locational factor discount to the subject by reducing its value 45% to account for the subject not being located on a primary Missoula thoroughfare. (Ex. D.)
34. Greenberg testified that the Stuckey appraisal offered by the Taxpayer as evidence of market value was what she knew as a “prospectus appraisal,” produced for financing purposes prior to the property actually being built. Greenberg testified that the appraisal was based on 3,840 square feet of office space compared to the actual as built square footage of 4,200 square feet as measured by Greenberg during her inspection of the property.
35. Greenberg testified that Taxpayer’s proposed taxes per acre method failed to adjust for different mill levies in the various jurisdictions of the comparables and therefore questioned its accuracy. Greenberg further testified that the subject, unlike the comparables selected by the Taxpayer, includes 27 units of a higher value because of the associated heating and cooling, and has a large office and residence on-site. Finally, Greenberg testified that none of the Taxpayer comparable storage units were brand new like the subject. (MTAB Hrg. Transcr. 56:16.)
36. To whatever extent the following conclusions of law may be construed as findings of fact, they are incorporated accordingly.

**CONCLUSIONS OF LAW**

37. To whatever extent the foregoing findings of fact may be construed as conclusions of law, they are incorporated accordingly.
38. The Board has jurisdiction over this case and its order is final and binding upon all parties unless changed by judicial review. Mont. Code Ann. § 15-2-301.

**Burden of Proof**

39. The taxpayer bears the burden of proving the error of DOR's decision. *Farmers Union Cent. Exch., Inc. v. Dep't of Revenue of State of Mont.*, 272 Mont. 471, 476, 901 P.2d 561, 564 (1995); *Western Air Lines, Inc. v. Michunovich*, 149 Mont. 347, 353, 428 P.2d 3, 7 (1967).
40. However, DOR cannot rely entirely on the presumption in its favor and must present a modicum of evidence showing the propriety of their action. *Western Air Lines*, 149 Mont. at 353, 428 P.2d at 7.

**Assessment**

41. "All taxable property must be appraised at 100% of its market value..." Mont. Code Ann. § 15-8-111.
42. "[T]he Legislature intended the Department to utilize both the cost approach and the market data approach, depending upon the available market data, when it assesses property and estimates market value." *Albright v. State By & Through State*, 281 Mont. 196, 208, 933 P.2d 815, 823 (1997).

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43. “[F]or the taxable years from .... (c) January 1, 2015, through December 31, 2016, all property classified in 15-6-134, MCA, (class four) must be appraised at its market value as of January 1, 2014.” Mont. Admin. R. 48.18.124.

44. To prevail in a challenge of DOR’s assessment the taxpayer must prove:

- (1) that there are several other properties within a reasonable area similar and comparable to his;
- (2) the amount of the assessments on these properties;
- (3) the actual value of the comparable properties;
- (4) the actual value of his property;
- (5) the assessment complained of;
- (6) that by a comparison his property is assessed at a higher proportion of its actual value than the ratio existing between the assessed and actual valuations of the similar and comparable properties, thus creating discriminations.

*DeVoe v. Dep't of Revenue of Montana*, 233 Mont. 190, 194, 759 P.2d 991, 993-94 (1988) (quoting *Maxwell v. Shivers*, 133 N.W.2d 709, 711 (Iowa 1965)).

45. “Assessment formulations’ by [the Montana Tax Appeal Board] should be upheld unless there is a clear showing of an abuse of discretion.” *Peretti v. State, Dep't of Revenue*, 2016 MT 105, ¶ 15, 383 Mont. 340, 344, 372 P.3d 447, 450 (citing *O'Neill v. Dep't of Revenue*, 2002 MT 130, ¶ 23, 310 Mont. 148, 155, 49 P.3d 43, 47).

**Timeliness**

46. “One application for reduction may be submitted during each 2-year reappraisal cycle. The application must be submitted within 30 days

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from the date on the [assessment and classification] notice....” Mont. Code Ann. § 15-15-102(3).

47. Taxpayer’s testimony regarding the timeliness of his 2015 appeal was that he missed the deadline for appeal. Taxpayer did not heed the deadline noted for appeal on his June 2015 assessment notice and waited until he received his tax bill to file an appeal. Current law does not allow this Board to grant exceptions to this deadline and in fairness to other taxpayers we should not.

### **Profit**

48. Taxpayer also argued strenuously that he should not be fully taxed until his business was fully mature and profitable. Taxpayer introduced the Tax returns to show his business has had two years of losses. However, information about profitability is not included as a factor in the methods DOR is allowed to use to find market value of real property. There is no provision in Montana law for the DOR or this Board to consider whether a commercial venture is profitable when seeking true market value of land and improvements for property tax purposes. Our role in the system of taxation is to find value of the land and improvements for all Montana property. The sort of changes suggested by Taxpayer can only come through changes to statutes, which is the domain of the Legislature.

### **Second Floor Office**

49. Taxpayer testified that he can legally adapt his second floor office space to residential apartments or records storage under current zoning, and thereby generate income from the space. Without a finding as to whether the Taxpayer should have applied for the zoning he wanted before

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constructing the office, we do find he has the limited use of the second floor space. The Board defers to the local knowledge of the Missoula CTAB and upholds the 15% good value they set on the second floor. This Board agrees that the functionally depreciated value for limited use of the second floor office is \$19,922.

**Improvements**

50. The Board finds that the Taxpayer did not meet his burden to overcome the assumption of correctness for the DOR's value for the storage units. We conclude that it is proper for DOR to use a cost method when properties of mixed commercial and residential use are assessed. *Albright v. State By & Through State* allows DOR to choose the best method of assessment for properties. 281 Mont. 196, 200, 933 P.2d 815, 818 (1997). The Board found the DOR appraiser and exhibits to be more credible than the alternate method of valuation presented by the Taxpayer. Taxpayer did not account for different taxing authorities' mill rates and thereby mixed concepts of taxation and valuation. Nor did the taxpayer account for depreciation in his desired valuation. By not adjusting for the age, quality, utility (e.g. climate controlled), or associated office for the storage units, his proposed value is not more credible than the value set by the DOR. This Board holds the value for the storage units \$1,697,798.
51. The Board also finds the land valuation model used by the DOR to be credible, especially considering the 45% locational discount offered by the DOR due to a location removed from Missoula's traffic arteries. The land value remains at \$377,995.

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52. The Board did not receive any credible testimony or evidence that the value of the residence should be reduced. We find that value should remain at \$257,310.
53. Final value for the office associated with the storage business shall be \$253,346.
54. The value of the four storage buildings is determined to be \$1,697,798.
55. The value of the garage, the asphalt and fence associated with the business remains at \$100,800.
56. The Board concludes that the subject property has a total fair market value of \$2,687,329 for tax year 2016.

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**ORDER**

57. Jay and Deborah Getz' appeal and complaint is **granted in part and denied in part**.
58. Appeal of the 2015 valuation is **denied**.
59. For 2016, DOR is **ordered** to set the value of the second floor office of the property at \$19,922. The total value of land and improvements for 2016 is \$2,687,329.

**Notice:** You may be entitled to judicial review of this Order by filing a petition in district court within 60 days of the service of this Order. Mont. Code Ann. § 15-2-303(2).

**Ordered November 4, 2016.**



*David L. McAlpin*  
David L. McAlpin, *Chairman*  
MONTANA TAX APPEAL BOARD

*Stephen A. Doherty*  
Stephen A. Doherty, *Member*  
MONTANA TAX APPEAL BOARD

*Valerie A. Balukas*  
Valerie A. Balukas, *Member*  
MONTANA TAX APPEAL BOARD

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**CERTIFICATE OF SERVICE**

I certify that I caused a true and correct copy of the foregoing *Findings of Fact, Conclusions of Law, Order, and Opportunity for Judicial Review* to be sent by United States Mail via Print and Mail Services Bureau of the State of Montana on November 4, 2016 to:

**Jay and Deborah Getz**  
2204 River Road  
Missoula, MT 59801

**Elizabeth Roberts**  
Department of Revenue  
Legal Services Office  
P.O. Box 7701  
Helena, MT 59604-7701

  
\_\_\_\_\_  
Lynn Cochran, *Administrative Officer*  
MONTANA TAX APPEAL BOARD