

BEFORE THE MONTANA TAX APPEAL BOARD

FILED

AUG 23 2018

Montana Tax Appeal Board

NORMAN B. CAREY,

Appellant,

v.

STATE OF MONTANA,
DEPARTMENT OF REVENUE,

Respondent.

CASE No: PT-2018-9

FINDINGS OF FACT,
CONCLUSIONS OF LAW, ORDER,
AND NOTICE OF OPPORTUNITY FOR
JUDICIAL REVIEW

Before the Montana Tax Appeal Board is appellant Norman B. Carey’s appeal from the Missoula County Tax Appeal Board (CTAB) decision reducing the value of his property.

This Board held a *de novo* hearing on May 22, 2018.

For the reasons provided below, this Board partially grants Mr. Carey’s appeal.

ISSUES TO BE DECIDED

1. Whether the Montana Department of Revenue (DOR) properly and accurately valued Mr. Carey’s land and improvements.

FINDINGS OF FACT

Description of the Property

2. The land in this appeal is described as follows:

RIVERSIDE ADD 007, S20, T13 N, R19 W, BLOCK 23, LOT 1 – 20, 197654 SQUARE FEET, BLK 26 POR VAC DAKOTA STEET AND PORTIONS A, B AND C AMENDED RIVERSIDE ADDITION BLOCKS 23, 24

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AND 26; geocode 04-2200-20-1-01-05-0000, with a common address of 1615 Wyoming Street, Missoula.

3. The property's location is best represented by the map provided below, with the marker designating the location of Mr. Carey's property:



4. The land is 4.54 acres. DOR Ex. A.
5. On the land is a 41,948 square foot building which houses Westside Lanes and Fun Center, which includes bowling, mini-golf, a casino with a bar, a snack bar/restaurant and offices. MTAB Transcr. 34:4-7. Mr. Carey testified Westside Lanes and Fun Center employs 20 to 25 people. MTAB Transcr. 20:1-3.

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6. For the 2015/2016 tax cycle, the DOR determined Mr. Carey's land had a value of \$360,979 and his improvements a value of \$2,386,021 for a total value of \$2,747,000. DOR Ex. A.
7. On July 3, 2017, the DOR issued its assessment notice for the 2017/2018 tax cycle to Mr. Carey. The DOR determined Mr. Carey's land had a value of \$858,046 and his improvements a value of \$2,687,054 for a total value of \$3,545,100. Mr. Carey's land valuation increased by almost \$500,000 in the two years since the prior tax cycle lien date.

CTAB hearing – appeal and outcome

8. On July 20, 2017, Mr. Carey appealed the DOR's assessed value to the Missoula County Tax Appeal Board. Mr. Carey requested the CTAB find his land had a value of \$379,063 and his improvements a value of \$2,504,972 for a total value of \$2,884,000.
9. On December 15, 2017, the CTAB heard Mr. Carey's appeal.
10. After hearing all the evidence, the CTAB determined the land maintained a value of \$858,046 but reduced the value of the improvements from \$2,687,054 to \$2,497,754 for a total value of \$3,355,800. The CTAB issued its decision on December 27, 2017.

MTAB hearing

11. On January 25, 2018, Mr. Carey appealed the CTAB's decision to this Board. Mr. Carey requests this Board further reduce the valuation of his property to a total value of \$2,884,000.
12. This Board held a hearing on May 22, 2018.
13. At the hearing, Mr. Carey represented himself and testified on his own behalf. He called no other witnesses. Mr. Carey did not submit any exhibits.

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14. At the hearing, the DOR was represented by Dave Burleigh. The following witnesses testified in the DOR's case:
 - a. Leslie Snyder, area manager, DOR Property Assessment Division – Missoula County; and
 - b. Helen Greenberg lead commercial appraiser, DOR Property Assessment Division – Missoula County.
15. This Board admitted the following exhibits submitted by the DOR:
 - a. DOR Ex. A: DOR CTAB packet, which includes Classification and Appraisal Notice, Property Record Card, photos, and income and expense sheets for Mr. Carey's property;
 - b. DOR Ex. B: 2014, 2015, and 2016 Schedule E IRS forms showing income and loss for Westside Lanes [confidential]; and
 - c. DOR Ex. C: the DOR's Computer Assisted Land Pricing (CALP) model for valuing Mr. Carey's land [confidential].

Market value of Mr. Carey's land

16. To value the land, the DOR used computer assisted land pricing (CALP) modeling software. The software estimates the value of land based upon sales in the model by analyzing extracted land sale prices and adjusting for time, location and size to estimate a typical value for the first and remaining acres in the model area. DOR Ex. C.
17. The DOR testified the land sales within the commercial land market in Missoula started increasing in number and value at the end of 2014. MTAB Transcr. 16:10-13, 12:3-6.
18. The DOR explained the countywide commercial market's increases when inputted into the CALP revealed a "hot spot" or an "influence factor" for Mr. Carey's land. The DOR witness testified that the CALP indicated there were several neighborhoods in central Missoula in which larger parcels of land commanded premium prices for development. MTAB

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Transcr. 16:10-15. According to the DOR, the model indicated that considering size and location of recent sales, Mr. Carey's land is in a prime commercial location in Missoula and thus should have a higher land value due to the likelihood of it selling for a premium price. The DOR, as a result, designated Mr. Carey's land as "prime," which by the formula used increased the first acre of his land value by 30 percent. MTAB Transcr. 18:15.

19. Using this prime designation, therefore, DOR determined as of the January 1, 2016 lien date, Mr. Carey's land had a value of \$858,046. DOR Ex. A. The DOR testified its land value was only \$4.33 per square foot which is almost half the amount per square foot of similar commercial land sales in Missoula. MTAB Transcr. 14:4.
20. The CALP used to value the subject land included the purchase of adjoining land by a car dealership for expansion as a valid sale; for a sale price which was substantially higher than other sales in the model. DOR Ex. C. MTAB Transcr. 21:2-4. The DOR testified some of the land sales included in the CALP were for less than the final value found for Mr. Carey's land. For example, the DOR's CALP included one sale of a 4-acre parcel of land the DOR determined had a value of \$695,836. DOR Ex. A. Based on similar verified sales in the county, the DOR determined another 5.4-acre parcel of land had a value of \$497,285. DOR Ex. A. Lastly, the DOR determined the sale of a 10.3-acre parcel indicated a land value of \$1,255,555. DOR Ex. A.
21. Within the CALP, eight prime location adjustments were applied to land sold in locations referred to as "hot spots." The DOR designated these areas as premium in the CALP and applied a multiplier of 130% on the

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- first acre to account for the perceived desirability. The DOR relied on its CALP software to dictate premium pricing but gave limited testimony on comparable sales proximate to the subject which they believed justified why commercial land on Wyoming Street should be designated as prime.
22. While Ms. Greenberg from the DOR testified in general terms about her opinion of where “hot spots” were located in Missoula, she did not provide any maps, definitions, or statistical analysis to support the “hot spots.”
23. Mr. Carey expressed concern about his land being designated as “prime.” MTAB Transcr. 21:13. Mr. Carey testified his property is not on the main thoroughfare and is even considered hard to find by some customers. MTAB Transcr. 22:1-3. The DOR explained that the model indicates high priced sales on the major streets is radiating out to the secondary streets like Wyoming Street where the subject property is located. MTAB Transcr. 31:10-15.

Market value of Mr. Carey’s improvements

24. The DOR testified it valued Mr. Carey’s improvements using the income approach consistent with ARM 42.20.108. MTAB Transcr. 12:19-22.
25. The DOR’s income model is created by compiling self-reported income and expense information provided by commercial businesses in Missoula. MTAB Transcr. 10:14-15. The DOR’s income model then generates rent ratings – i.e. the income deriving possibility per square foot for a commercial property which changes based on the commercial use – and net operating income for such a business. MTAB Transcr. 11:17-23. The DOR then multiplies the net operating income it generates for the business by a capitalization rate to determine the market value of a property. MTAB Transcr. 20:17-19; DOR Ex. A.

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26. According to the DOR, it selected a rent rating of 4 instead of 3 because Mr. Carey's building includes a casino and a bar. A rent rating of 4 corresponds to \$11.75 of rent per square foot, while a rent rating of 3 corresponds to \$9.25 of rent per square foot. MTAB Transcr. 10:4-6; DOR Ex. A.
27. With its income approach, the DOR found Mr. Carey's improvements had a total value of \$2,687,054. MTAB Transcr. 2:21.
28. The DOR testified it cannot use Mr. Carey's income data alone to create an income model. For example, the DOR determined Mr. Carey's rent rate of \$4.00 per square foot is \$10 per square foot lower than the commercial market. MTAB Transcr. 27:11-18 Therefore, the DOR testified Mr. Carey's actual rent information did not represent fair market value. MTAB Transcr. 14:1-6.
29. The DOR also valued Mr. Carey's improvements with the cost approach. DOR Ex. A. Using the cost approach, the DOR determined Mr. Carey's improvements had a replacement cost new less depreciation value of \$2,287,170. DOR Ex. A.
30. To whatever extent the following conclusions of law may be construed as findings of fact, they are incorporated accordingly.

CONCLUSIONS OF LAW

31. To whatever extent the foregoing findings of fact may be construed as conclusions of law, they are incorporated accordingly.

Jurisdiction

32. Mr. Carey timely appealed the CTAB's decision to this Board. Therefore, this Board has jurisdiction to hear and decide this appeal. *See* Mont. Code Ann. § 15-2-301(1)(b).

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33. “In connection with any appeal under [Mont. Code Ann. § 15-2-301], the state board is not bound by common law and statutory rules of evidence or rules of discovery and may affirm, reverse, or modify any decision. To the extent that this section is in conflict with the Montana Administrative Procedure Act, this section supersedes that act.” Mont. Code Ann. § 15-2-301(5).
34. This Board hears CTAB appeals *de novo*. See *CHS, Inc. v. DOR*, 2013 MT 100, ¶ 29. “A trial *de novo* means trying the matter anew, the same as if it had not been heard before and as if no decision had been previously rendered.” *McDunn v. Arnold*, 2013 MT 138, ¶ 22.

Burden of Proof

35. The appraised value supported by the most defensible valuation information serves as the value for ad valorem tax purposes. Mont. Admin. Reg. 42.18.134, formerly Mont. Admin. Reg. 42.18.110(12).
36. However, “[a]s a general rule, . . . the appraisal of the DOR is presumed to be correct and the taxpayer must overcome this presumption. The Department of Revenue should, on the other hand, bear a burden of providing documented evidence to support its assessed values.”
Workman v. The Department of Revenue of the State of Montana, 1997 WL 37203, *1 (Mont.Tax.App.Bd.); citing *Western Airlines, Inc. v. Catherine J. Michunovich, et al*, 149 Mont. 347, 428 P.2d 3 (1967).
37. The taxpayer has the burden to show the DOR’s appraisal value should be reduced. Mont. Code Ann. § 26-1-401.

Market Value

38. “All taxable property must be assessed at 100 percent of its market value except as otherwise provided.” MCA § 15-8-111(1).

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39. “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.” MCA § 15-8-111(2)(a).
40. This Board, upon hearing a tax appeal, may increase or decrease a property value to ensure the property is “assessed at 100 percent of its market value.” *See Puget Sound Energy Inc. v. State Dept. of Revenue*, 2011 MT 141, 255 P.3d 171; and *O’Neill v. Department of Revenue*, 2002 MT 130, 49 P.3d 43.
41. Under Montana law, the DOR can use a combination of approaches – i.e. the market data approach, the income approach, and the cost approach – to value a property. *Albright v. State*, 281 Mont. 196, 208 - 209 (Mont. 1997). The DOR does not have to use only one approach when it “appraises property and estimates market value.” *Id.* at 208.
42. The Montana Supreme Court in *Albright* concluded:

We recognize that the Department’s method of assessing property and estimating market values is by no means perfect, and will occasionally miss the mark when it comes to the Constitution’s goal of equalizing property valuation. However, perfection in this field is, for all practical purposes, unattainable due to the logical and historical preference for a market-based method, and the occasional lack of market data. Nonetheless, we conclude that the Department’s interdisciplinary method – which utilizes the market data approach, the income approach, the cost approach, or some combination of those approaches – is a reasonable attempt to equalize appraisal of real property throughout the State and that it comports with the most modern and accurate appraisal practices available. *Id.* at 213.

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Improvements

43. This Board finds that the taxpayer failed to meet his burden to further reduce his improvement value. His testimony indicates he charges his tenant lower than market rate for the use of the improvements, but this does not justify a further reduction in improvement value. We defer to the local expertise of the Missoula County Tax Appeal Board which set the rent and capitalization rates for the property at \$6 per square foot and a capitalization rate of 7.5% to yield an income improvement value of \$2,497,754.

Land

44. Regarding the value of Mr. Carey's land, this Board finds the DOR did not support the prime designation and its associated increase to the subject land value. The DOR's land value for the subject property during the present tax cycle increased by approximately \$500,000 from the prior tax cycle. The DOR explained that commercial land sales have radiated out to non-thorough fare streets and this warranted Mr. Carey's property being designated as prime. Because it was designated as prime land, the DOR increased Mr. Carey's land value.

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45. DOR's CALP included land sales which were less than the DOR's value of Mr. Carey's land but also seemed to rely on a purchase of land by a car dealership which ostensibly has skewed the DOR's CALP. Car dealerships are captive to the sales of adjoining land if they want to expand, therefore would be willing to pay higher than market values for this adjoining land. The use of this sale raises questions about the reliability of the CALP used to value the subject.

46. We find the DOR did not present evidence to show that "Hot Spots" are more than intuition or speculation and that accordingly the prime adjustment, or at a minimum the amount of that adjustment at 130% was not supported by substantial credible evidence. Nor was this Board provided evidence to convince us that Mr. Carey's land is in a "Hot Spot." Mr. Carey gave credible testimony that the location of his property is not on one of the busy arterial streets in Missoula that can justify a prime designation. As a result, this Board finds insufficient evidence to justify a prime designation for Mr. Carey's land. When this designation is not applied the value of this parcel it will be reduced from \$858,046 to \$733,746.

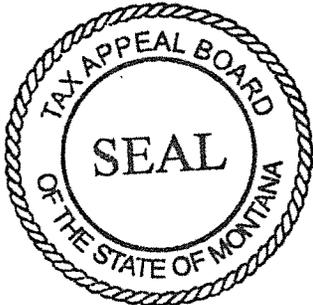
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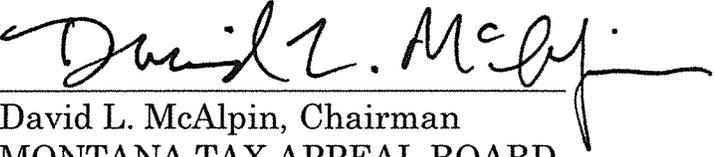
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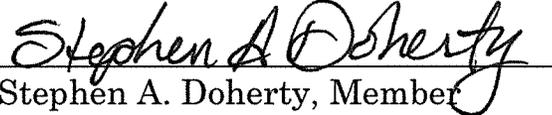
ORDER

1. Mr. Carey's appeal is granted in part.
2. For the 2017 and 2018 tax years, the DOR shall value Mr. Carey's property, identified by geocode 04-2200-20-1-01-05-0000, as follows:
 - a. The land shall have a value of \$733,746;
 - b. The improvements shall have a value of \$2,497,754;
 - c. For a total value of \$3,231,500.

Ordered August 22nd, 2018.




David L. McAlpin, Chairman
MONTANA TAX APPEAL BOARD


Stephen A. Doherty, Member
MONTANA TAX APPEAL BOARD


Valerie A. Balukas, Member
MONTANA TAX APPEAL BOARD

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. The Department of Revenue shall promptly notify this Board of any judicial review to facilitate the timely transmission of the record to the reviewing court. Mont. Code Ann. § 15-2-303(2).

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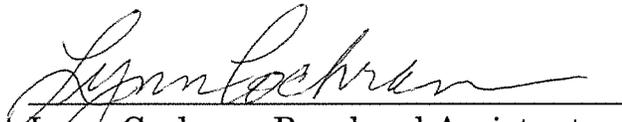
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Certificate of Service

I certify that I caused a true and correct copy of the foregoing *Findings of Fact, Conclusions of Law, and Notice of Opportunity for Judicial Review* to be sent by United States Mail via Print and Mail Services Bureau of the State of Montana on August 23, 2018 to:

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MONTANA TAX APPEAL BOARD

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