

BEFORE THE MONTANA TAX APPEAL BOARD

**FILED**

AUG 31 2018

Montana Tax Appeal Board

HAPPY VALLEY STORAGE LLC,

*Appellant,*

v.

STATE OF MONTANA,  
DEPARTMENT OF REVENUE,

*Respondent.*

CASE No: PT-2018-5  
(Tax Year 2017)

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

Before the Montana Tax Appeal Board is appellant Happy Valley Storage LLC's (HVS) appeal from the Flathead County Tax Appeal Board (FCTAB) decision denying its appeal and upholding the DOR value of the subject property.

This Board held a hearing in the appeal on May 24, 2018.

For the reasons provided below, Happy Valley's appeal is denied.

**ISSUES TO BE DECIDED**

1. Whether the DOR assessed Happy Valley's land and improvements at market value.

**FINDINGS OF FACT**

**Description of the Property**

2. The property involved in this appeal is described as follows:  
4980 Hwy 93 South in Whitefish, Montana; geocode:  
07-4184-25-1-19-99-0000.
3. The land is 14.43 acres. DOR Ex. C.

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4. On the land are thirteen mini-storage warehouse buildings and one garage, occupied by 239 rental storage units measured at 45,400 square feet. DOR Ex. C.

**AB-26 – appeal and outcome**

5. On July 22<sup>nd</sup> of 2017, the DOR mailed HVS its assessment notice for tax years 2017 and 2018. DOR Ex. E. The DOR's assessment notice stated a total assessed value of HVS land at \$378,826, and the buildings at \$1,201,574, for a total of \$1,580,400. *Id.*
6. On July 17, 2017, HVS submitted an AB-26 request for informal review of the value of its property by the DOR. DOR Ex. E.
7. On October 6, 2017, the DOR issued its AB-26 determination letter. DOR Ex. E. The DOR did not adjust the value of the HVS property.

**FCTAB hearing – appeal and outcome**

8. On November 3, 2017, HVS appealed the DOR's valuation to the FCTAB. DOR Ex. D.
9. HVS requested the FCTAB find its total value at \$1,025,000. *Id.*
10. After hearing all the evidence and testimony at the December 11, 2017 hearing, the FCTAB denied HVS's appeal.

**MTAB hearing**

11. On January 11, 2018, HVS appealed the FCTAB's decision to this Board. HVS requested a land and improvement value of \$1,025,000. In the appeal, HVS asserted 1) the DOR income approach should have used actual reported income and expense data from the subject property and a higher capitalization rate, 2) the land valuation was flawed as compared to similar land values nearby the subject, and 3) a more reliable method to value his improvements could have been used under the cost approach with certain reductions for cost of construction.

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12. On May 24, 2018, this Board conducted a hearing at the Montana Tax Appeal Board office located at 600 North Park Avenue, Helena, Montana.
13. At the hearing, HVS was represented by Jeffrey Kraig Jensen. Mr. Jensen testified. He called no other witnesses.
14. This Board admitted the following exhibits submitted by Mr. Jensen:
  - a. Tx. Ex 1: Letter to MTAB for Appeals;
  - b. Tx. Ex 2: HVS DOR Form 8825;
  - c. Tx. Ex 3: HVS Property Record Card;
  - d. Tx. Ex 4: 2015 AB 26 Determination Letter;
  - e. Tx. Ex 5: HVS Mini-warehouse Income and Expense form;
  - f. Tx. Ex 6: HVS Monthly Rental Rates;
  - g. Tx. Ex 7: 2014 HVS Cost Approach Land Value;
  - h. Tx. Ex 8: HVS Cost Approach Improvements and Land Value;
  - i. Tx. Ex 9: Map of HVS area and comparables;
  - j. Tx. Ex 10: Revised HVS I&E with reserves and replacements;
  - k. Tx. Ex 11: HVS chart with cap rate and no R&R;
  - l. Tx. Ex 12: HVS revised example of how a fee appraiser could calculate the income approach;
  - m. Tx. Ex 13: Payscales.com property manager salary;
  - n. Tx. Ex 14: Self-storage newsletter with cap rates;
  - o. Tx. Ex 15: Building kit example cost/square foot;
  - p. Tx. Ex 16: Carl Construction email with cost per square foot to build a mini-storage building;
  - q. Tx. Ex 17: Strellnauer email re valuation of commercial property;
  - r. Tx. Ex 18: JCCS accountant letter;
  - s. Tx. Ex 19: ARM 42.20.108;
  - t. Tx. Ex 20: ARM 42.20.109;
  - u. Tx. Ex 21: FCTAB Decision denying county appeal;
  - v. Tx. Ex 22: Discovery requests from DOR dated 3.29.18;
  - w. Tx. Ex 23: HVS answers to DOR date 4.24.18;
  - x. Tx. Ex 25: Page 34 of Montana DOR Reappraisal Plan 2017-2018;
  - y. Tx. Ex 41: Copy of ARM 42.18.208 and Appraiser Certification;
  - z. Tx. Ex 43: DOR Statistics on I&E questionnaire responses;
  - a. Tx. Ex 44: HVS witness list;
  - b. Tx. Ex 45: DOR response to first discovery request dated 4.2.18;
  - c. Tx. Ex 46: HVS 2014 tax bill;

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- d. Tx. Ex 48: HVS Jensen email to DOR Gochis dated 4.23.18;
  - e. Tx. Ex 49: DOR Gochis response to HVS dated 4.24.18;
  - f. Tx. Ex 50: HVS Chart of values;
  - g. Tx. Ex 52: Jensen's notes from discussion with UM Patterson regarding DOR survey;
  - h. Tx. Ex 36: Pages from DOR's Property Assessment Manual;
  - i. Tx. Ex 37: Pages from DOR's Property Assessment Manual;
  - j. Tx. Ex 38: Pages from DOR's Property Assessment Manual;
  - k. Tx. Ex 40: ARM 42.18.208;
  - l. Tx. Ex 41: Copy of DOR square foot rental form.
15. At the hearing, the DOR was represented by Nicholas Gochis.
16. The following witness testified in the DOR's case:
- a. Dan Lapan, Area 1B Manager, DOR Property Assessment Division;
  - b. Dana Morgan, Commercial Appraiser, DOR Property Assessment Division – Flathead County; and
  - c. Ross Halvorson, Income Management Analyst, DOR Property Assessment Division 3.
17. This Board admitted the following exhibits submitted by the DOR:
- a. DOR Ex. A: DOR 2017-8 Reappraisal Plan;
  - b. DOR Ex. B: Mini-warehouse I&E Reporting Form (confidential);
  - c. DOR Ex. C: DOR Assessment Info. Packet (confidential);
  - d. DOR Ex. D: FCTAB Appeal and Decision for HVS;
  - e. DOR Ex. E: AB-26 Packet;
  - f. DOR Ex. F: HVS CALP Land Model (confidential);
  - g. DOR Ex. G: 2017 Cost Calculations;
  - h. DOR Ex. H: DOR Mini-warehouse Cap Rate Study (confidential).

**Income approach for the Improvements**

18. As a commercial property, the DOR testified it used the income approach to value the HVS property. MTAB Hrg. 51:3; DOR Ex. E.
19. Using its income model for mini-storage commercial properties, the DOR determined the HVS property had a market value of \$1,584,000. DOR Ex. E.
20. When using the income approach, the DOR's appraisers testified they followed ARM 42.20.107 and 42.20.108. MTAB Hrg. 65:3-7. The DOR's income approach relies on an income model generated from income information collected from businesses like the subject's business. For example, if the subject property is a mini-warehouse, the DOR will use only income and expense data collected from Montana mini-warehouse businesses to generate typical income and expenses to calculate market values for all Montana mini-warehouses. The data is self-reported to the DOR, so the department is limited by that information when creating its valuation model.
21. DOR witness Halvorson testified the DOR's mini-warehouse income model was created using income and expense data from mini-warehouse storage businesses across Montana. MTAB Hrg. 89:13-22. He testified that even though the DOR relies on self-reported income and expense data, they get enough statewide responses to ensure the model is statistically significant and that it is statistically defensible to use statewide data to create statewide models for this business type. Halvorson testified that this income method is the most defensible way to find value because it uses actual reported data.

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22. At the hearing, Mr. Jensen testified the DOR used an income approach model that was unrealistic in that it failed to consider his higher cost for management of the property. He testified to actual management costs for his mini storage business of \$40,000, whereas the DOR model projected management costs of \$9,316. Similarly, taxpayer disputed the DOR's income approach model which used lower projected expenses than Mr. Jensen's for maintenance and utilities. Mr. Jensen asserted the DOR's income approach should be reduced to account for HVS's actual data. DOR Ex. C, Bates page 9. In general, Mr. Jensen argued that once the DOR had received HVS's individual income information during the AB-26 review, the DOR should have used HVS's actual income data in its income formula rather than rely on its own model.
23. DOR Manager Lapan testified that because Jensen's manager did not draw a salary and was paid in kind with free housing on site and utilities, therefore an expense for salary should not be considered. MTAB Hrg. 67:11-14.
24. Despite these differences, income and expense information as compared to the DOR model for typical rents and expenses, HVS's actual expenses were much higher in the categories of management, utilities, and maintenance, but lower in reserves for replacement and miscellaneous. HVS' lower self-reported expenses indicated a higher value for the subject under the DOR income method calculation.
25. Overall the income and expense valuation difference between HVS's actual numbers and DOR's model was \$21,532. Other values in the model were similar and ultimately reached a total improvements

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valuation difference between using HVS' actual numbers and the DOR model of \$219,714.

26. The DOR witness testified that actual income information from the subject business could only be used to verify the accuracy of the DOR's income model, because it would be unfair and impractical to use only one taxpayer's self-reported data to find their value. However, if a taxpayer's actual income information does not fall within the income model, the DOR will consider the individual income information to re-evaluate its model and on rare occasions where the taxpayer can demonstrate an expense beyond the taxpayer's control, adjust a property value.
27. Regarding payroll expenses, the DOR's income model predicts payroll expenses at 1.7 percent based on actual expense data provided by mini-storage businesses across Montana. MTAB Hrg. 90:1-11.
28. DOR's Halvorson testified that actual data from tax returns is not directly inputted into the DOR model as the purpose of the model is to estimate market value, so it would be unrealistic for taxpayers to expect the same expense categories from their income tax return to be used in the DOR model. Mr. Halvorson testified the categories used by DOR do capture typical expenses and do comply with Montana law and best practice for appraisal.
29. Regarding net operating income, Mr. Jensen testified HVS's Federal income tax returns had a two-year average Net Operating Income of about \$100,000. The DOR's model projects the standard NOI for this sized mini-storage at \$154,880.

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**Cost approach for the Improvements**

30. Taxpayer testified that the cost approach used by the DOR to validate the income value appraisal of his property was also fraught with flaws. DOR's cost method found a value of \$1,583,426. Jensen provided an email from a contractor estimating a cost of construction per square foot of less than \$20, much lower than the \$30-50/sf estimate used by the DOR in their cost valuation. Tx Ex. G. Taxpayer testified he could remove his existing wood framed buildings and replace them with metal prefabricated mini-storage buildings for \$15/sf.

31. DOR appraiser Lapan testified that the contractor's email estimate of cost did not consider either the expense to prepare a site for construction, or any entrepreneurial profit. MTAB Hrg. 77:5-14.

32. Lapan testified that the DOR's cost worksheet was a reliable method to estimate cost of construction based on national cost charts, local adjustments, and depreciation for age. DOR EX. G. MTAB Hrg. 77:16-20. DOR disputed the assertion that the estimate for construction of less than \$20/sf was realistic.

**Land valuation**

33. Taxpayer provided a map and testified that a review of Cadastral land values in proximity to his property indicated that his land is being overvalued when compared to his neighbors. Tx. Ex. 9.

34. DOR manager Lapan testified that DOR must use actual recent land sales to find land values. He testified that the DOR's CALP land value model used verified land sales to find the subject's base acre and residual acre land values. Mr. Lapan testified that the neighboring properties are not all commercial, and thus the valuation differences are a result of different property classifications. Lapan testified a similarly

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sized parcel on the taxpayer's map had sold in 2015 for use as a commercial mini-warehouse for substantially more than the subject land value, thus validating the land value of \$378,826 for the subject. MTAB Hrg. 73:3-8.

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

CONCLUSIONS OF LAW

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

**Jurisdiction**

37. HVS timely appealed the FCTAB's decision to this Board. Therefore, this Board has jurisdiction to hear and decide this matter. *See* Mont. Code Ann. § 15-2-301(1)(b).

38. "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 conflicts with the Montana Administrative Procedure Act, this section supersedes that act." Mont. Code Ann. § 15-2-301(5).

39. The Rules of Evidence do not apply in an appeal under MCA § 15-2-301, which benefits pro se, self-represented taxpayers. A taxpayer will often present evidence which contains hearsay and lacks foundation, and yet this Board admits the evidence because of the leeway provided for in MCA § 15-2-301.

**Market Value**

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40. “All taxable property must be assessed at 100 percent of its market value except as otherwise provided.” MCA § 15-8-111(1).
41. “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).

**Burden of Proof**

42. “As 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).
43. The taxpayer has the burden to show the DOR’s appraisal should be reduced. Mont. Code Ann. § 26-1-401; and *Farmers Union Cent. Exch. v. Department of Revenue*, 272 Mont. 471 (Mont. 1995).
44. 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); *Rainbow Senior Living of Great Falls v. Montana Department of Revenue*, 2013 WL 6062167 (Mont.Tax.App.Bd.); *Keck v. Montana Department of Revenue*, 2013 WL 2476838 (Mont.Tax.App.Bd.).
45. 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 -

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209 (Mont. 1997). The DOR does not have to use only one approach when it “appraises property and estimates market value.” *Id.* at 208.

46. 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.

47. Regarding the income approach, MCA 15-8-111(2)(c) states:

If the department uses the income approach as one approximation of market value and sufficient, relevant information on comparable sales and construction cost exists, the department shall rely upon the two methods that provide a similar market value as the better indicators of market value.

48. The DOR adopted and applies ARM 42.20.108 as to the income approach, which states:

(1) The income approach is based on the theory that the market value of income-producing property is related to the amount, duration, and certainty of its income-producing capacity. The formula used by the department to estimate the market value of income-producing property through application of the income approach to value is  $V = I/R$  where:

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(a) "V" is the value of the property to be determined by the department;

(b) "I" is the typical property net income which shall reflect market rents, not investment value income or other rents, for the type of properties being appraised; and

(c) "R" is the capitalization rate determined by the department as provided in ARM 42.20.109.

(2) Market rent is the rent that is justified for the property based on an analysis of comparable rental properties, and upon past, present, and projected future rent of the subject property. It is not necessarily contract rent, which is the rent actually paid by a tenant.

49. For the capitalization rates referenced in ARM 42.20.108, ARM 42.20.109 states

(1) When using the income approach, the department will develop overall capitalization rates which may be according to use type, location, and age of improvements. Rates will be determined by dividing the net income of each property in the group by its corresponding valid sale price. The overall rate chosen for each group is the median of the rates in that group. The final overall rate must include an effective tax rate.

(2) If there are insufficient sales to implement the provisions of (1), the department will consider using a yield capitalization rate. The rate shall include a return of investment (recapture), a return on investment (discount), and an effective tax rate. The discount is developed using a band-of-investment method for types of commercial property. The band-of-

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investment method considers the interest rate that financial institutions lend on mortgages and the expected rate of return an average investor expects to receive on the equity. This method considers the actual mortgage rates and terms prevailing for individual types of property.

(3) A straight-line recapture rate and effective tax rate will be added to the discount rate to determine the yield capitalization rate.

50. This Board heard limited testimony from Mr. Jensen challenging the DOR's land value of \$378,826, and that evidence and testimony was not based on actual sales, rather was based on comparing Cadastral values. Mr. Lapan refuted taxpayer's testimony with his information for neighboring properties of an actual sale of comparable property for substantially more than the DOR's value of the subject, thus providing credible testimony the subject land was not overvalued.

51. Primarily, Mr. Jensen challenged the income model DOR used to find that HVS's improvements had a market value of \$1,201,574. Mr. Jensen believes DOR should have used HVS's actual income and expense data as reported to DOR during the AB-26 to value his property. This is a common request by taxpayers during their appeals, but this board has consistently held that DOR is not provided the resources to make individual appraisals of every Montana property. In the *Albright* case the Montana Supreme Court affirmed DOR's use of mass appraisal techniques and to choose the most defensible method of valuation to establish property values.

52. This Board believes Mr. Jensen's testimony has raised some valid concerns with the DOR's income approach, but it would be prohibitive for the DOR to mandate reporting of actual income and expense

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information on every commercial property to more accurately value the thousands of Montana properties.

53. Mr. Jensen provided evidence and testimony in favor of an alternative application of income and expense methodologies which may have yielded a lower value, but he has not met his burden to convince this Board that the DOR was in error when they determined market value for the HVS property.

54. Montana, like many other states, finds market value for all properties using mass appraisal methods. As the Montana Supreme Court stated in *Albright*, perfection of valuation is not administratively realistic. 281 Mont. at 213. The DOR generates an income model to value commercial properties. The model may not be perfect, but the goal is to arrive at market value and, here, the DOR's income model did generate data which reasonably approximates HVS's actual income data.

55. We find the DOR supported its value of the land and improvements. The DOR's testimony indicated it complied with the above regulations and Montana law in valuing the HVS property using the income approach.

56. This Board finds, therefore, HVS has failed to show the DOR over valued their mini-warehouse storage property and we find the DOR provided enough evidence supporting its valuation of the property.

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ORDER

1. For the reasons provided above, HVS's appeal is denied.
2. For the 2017 and 2018 tax years, the DOR's value of the property at geocode 07-4184-25-1-19-99-0000 is affirmed as follows:
  - a. The land has a value of \$378,826;
  - b. The improvements have a value of \$1,201,574;
  - c. For a total value of \$1,580,400.

Ordered August 31st, 2018.



A handwritten signature in black ink, appearing to read "David L. McAlpin".

David L. McAlpin, Chairman  
MONTANA TAX APPEAL BOARD

A handwritten signature in black ink, appearing to read "Steve Doherty by Dea".

Stephen A. Doherty, Member  
MONTANA TAX APPEAL BOARD

A handwritten signature in black ink, appearing to read "Valerie A. Balukas".

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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**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 August 31, 2018 to:

Happy Valley Storage LLC  
c/o Jeff Jensen  
320 Blanchard Hollow  
Whitefish, MT 59937

Nicholas Gochis  
Montana Department of Revenue  
Legal Services Office  
P.O. Box 7701  
Helena, MT 59604-7701



Lynn Cochran, Admin. Paralegal  
MONTANA TAX APPEAL BOARD