

BEFORE THE MONTANA TAX APPEAL BOARD

FILED

OCT 05 2018

Montana Tax Appeal Board

CASE No: PT-2018-20

GLEN & JOHANNA WOHL,

Appellants,

v.

**STATE OF MONTANA,
DEPARTMENT OF REVENUE,**

Respondent.

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

Before the Board is Appellants Glen and Johanna Wohl's appeal from the Missoula County Tax Appeal Board decision partially granting their appeal of Respondent State of Montana, Department of Revenue's valuation of Wohl's commercial property located at 2339 South Ave. West, Missoula, known by geocode 04-2200-32-2-76-60-0000; legal description Lots 17-20, Block 40 of the Caroline Addition S32, T13 N, R19 W.

ISSUE

1. The issue before the Board is whether the DOR correctly determined the 2017/2018 value of the land for property tax purposes. The Wohls do not dispute the DOR's value of the improvements located thereon.

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FINDINGS OF FACT

2. The record includes all materials submitted to the Missoula County Tax Appeal Board (CTAB), the transcript of their hearing, and additional materials submitted by the parties, as well as the transcript of the hearing before this Board.
3. Due, proper and sufficient notice was given of this matter and of the time and place of hearing. All parties were afforded the opportunity to present evidence, verbal and documentary.
4. The Board originally scheduled the hearing for May 31, 2018, but at Mr. Wohl's request the Board rescheduled the hearing for July 10, 2018. On June 29, 2018, the Wohls filed a document titled "Helen Greenberg's Violation of Taxpayer Bill of Rights 15-1-222(5)" in which Mr. Wohl notified the Board that he would not appear at the hearing. The Board will treat this filing as a written summary of taxpayer's testimony which was accompanied by the taxpayer's exhibits:

Ex. 1 – Wohl letter to MTAB dated February 13, 2018;

Ex. 2 – Wohl letter to MTAB dated May 17, 2018;

Ex. 3 – copy of MTAB Order filed June 4, 2018;

Ex. 4 – email from Thornburg to Greenburg dated July 26, 2017;

Ex. 5 - copy of MCA §15-1-222 Taxpayer Bill of Rights;

Ex. 6 – Wohl letter to Greenburg dated August 3, 2017;

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Ex. 7 – Greenburg letter to Wohl dated August 7, 2017;

Ex. 8 – Confidentiality Agreement signed by Wohl dated August 9, 2017;

Ex. 9 – MTAB Appeal Form dated February 13, 2018;

Ex. 10 – CTAB Transcript of Hearing PT-2018-20 dated January 22, 2018;

Ex. 11 – CTAB Transcript of Hearing PT-2018-20 dated January 22, 2018.

5. The Board conducted a hearing on July 10, 2018 at 1:00 PM at 600 N. Park Ave., Helena at which the following were present:

- a. Nicholas J. Gochis, representing DOR;
- b. Helen Greenberg, DOR lead appraiser for Missoula County;
- c. Leslie Snyder, DOR Area manager.

6. The following DOR exhibits were introduced and admitted:

Ex. A – Aerial photograph of the property and neighborhood;

Ex. B – 2017 Property Record Card with a run date of 1/16/2018;

Ex. C – Cost Analysis;

Ex. D – Subject property photo;

Ex. E – Income Analysis (sealed);

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Ex. F – Land Comparables (sealed);

Ex. G – CALP land model (sealed);

Ex. H – CTAB Appeal form with CTAB decision

7. The DOR assessed the property at \$867,900 for the 2017-2018 tax cycle, \$493,922 for the land and \$373,978 for the improvements. Ex. B. For the prior 2016-2017 tax cycle, the property was assessed at \$539,700, \$147,760 for the land and \$391,940 for the improvements. *Id.*
8. Mr. Wohl filed a CTAB appeal for this property, and another property not under appeal, with this Board, on July 7, 2017. Ex. H. For the property under appeal before this Board, Mr. Wohl requested a land value of \$169,924. *Id.*
9. On July 18, 2017, Mr. Wohl contacted Ms. Greenberg in the Missoula DOR office, by phone, and requested the property record cards and any additional information she could provide related to how the DOR determined the value of his two properties. Wohl Written Testimony filed June 29, 2018, p. 2. Ms. Greenberg told Mr. Wohl she would put together the information and leave it for him at the front desk of the Missoula DOR office. *Id.*
10. On July 26, 2018, Mr. Wohl went to the Missoula DOR to pick up the information. *Id.* Ms. Greenberg was not in the office at the time, so Mr. Wohl spoke with Janet Thornburg who was in the office, and she was unable to find anything for Mr. Wohl, so she followed up with an email to Ms. Greenberg to let her know what had happened. *Id.*, Ex. 4.

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11. On August 3, 2017, Mr. Wohl sent Ms. Greenberg a Certified letter requesting copies of “ALL records, photographs, documents and data the DOR utilized to support your approach method in determining the current assessed values for the above described properties. Additionally, please provide a full appeal packet, record card and photos for the subject properties.” Ex. 6.
12. On August 7, 2018, Ms. Greenberg responded by correspondence stating that Mr. Wohl had to sign and return the enclosed Confidentiality Agreement before she could release the information to him. Ex. 7.
13. Mr. Wohl testified that he signed and mailed the Confidentiality Agreement back to Ms. Greenberg, and provided a copy of the signed Confidentiality Agreement. Ex. 8.
14. Mr. Wohl never received any of the requested information from the DOR, and as such, was only able to review it for the first time at the CTAB hearing while the DOR was introducing various exhibits to the CTAB. Wohl Written Testimony filed June 29, 2018, p. 3.
15. Ms. Greenberg testified that she could not recall whether she actually printed and mailed the appeal packets to Mr. Wohl, but had she received a second document request from Mr. Wohl she would have printed the information again and sent it to him. MTAB Hrg. Transcr. 40:50-41:25.
16. Ms. Greenberg testified that Mr. Wohl never contacted her again about the documents and that she was unaware that he did not have that information prior to the CTAB hearing. MTAB Hrg. Transcr. 40:50-41:25.

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17. Mr. Wohl alleges that Ms. Greenberg's failure to respond to his request for information necessary to assist him in his appeals violated the Taxpayer's Bill of Rights at M.C.A. §15-1-222.
18. Ms. Greenberg testified that the property subject to this appeal is located half a block east of ShopKo which sits on the corner of South Avenue and Reserve Street, and is classified by DOR as a multi-occupancy retail commercial property. MTAB Hrg. Transcr. 8:20-8:30, 13:15-13:45.
19. Ms. Greenberg testified that the DOR valued the Wohl's property using the income method, however, that value was substantiated by the cost approach, which indicated a value that was within one-percent of the income method. MTAB Hrg. Transcr. 12:00-12:30.
20. Ms. Greenberg testified that when the DOR uses an income approach, it uses sales and market data to determine a capitalization rate, and voluntarily reported expenses and rents to determine typical rent ratings and expenses. MTAB Hrg. Transcr. 16:20-45. The income model used by DOR to determine the value of the subject property consisted of 166 expense data points collected from the seven biggest metro area in Montana, and the rental income consisted of 150 data points specific to Missoula County only. MTAB Hrg. Transcr. 18:30-19:00.
21. Ms. Greenberg explained that the subject property was given a rent rating of 4, which is an average rent rating for retail property in Missoula, equating to \$11.75 per square foot, which was multiplied by the building's 9,200 square feet, to calculate a potential gross income of \$108,800. Ex. E, MTAB Hrg. Transcr. 16:30-18:30. The DOR then applied a 16% reduction

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for vacancies and collections to reach an effective gross income of \$90,804, from which they deducted operating expenses of \$16,164, to reach a Net Operating Income (NOI) of \$74,640. *Id.* The DOR divided the NOI by its capitalization rate of 8.6 percent to reach a market value of \$867,900 for the property. *Id.*

22. Mr. Wohl submitted a letter drafted by James A. McNay, C.P.A., the Wohls tax return preparer, along with partially redacted copies of his 2014, 2015 and 2016 Federal Schedule E Supplemental Income and Loss, stating his rental income for the subject property was \$32,000 in 2013 and 2014 and \$30,000 for 2015 and 2016. CTAB Exs. 4, 5, 6, 7. Using the DOR property record card showing the building is 9,200 square feet, this equates to an actual rental rate of \$3.26 per square foot. *Id.*

23. Mr. Wohl testified at the CTAB hearing that his rental income from the subject property declined because he lowered the rent for a tenant who ran into financial trouble and was otherwise going to have to vacate the property and Mr. Wohl concluded that he would rather lower the rent than risk the unknown of how long the property would remain vacant before a new tenant was secured and moved in. CTAB Hrg. Transcr. 4:20-5:3.

24. Ms. Greenberg explained that the DOR's cost approach first determines the land value as if it were vacant land, based on a sales comparison approach, and then determines a cost value less depreciation to value the improvements and other outbuildings or yard improvements. MTAB Hrg. Transcr. 19:20-50.

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25. Ms. Greenberg explained that the DOR uses costs tables imported from Marshall & Swift to establish a base cost for the various use-types of improvements, which, times the square footage, equals the base price for each component. MTAB Hrg. Transcr. 21:00-23:00. These components are added together to calculate the replacement cost new, after which the DOR applies depreciation along with adjustments to account for differences in building costs specific to Missoula County, as opposed to national averages, to reach a cost approach market value of \$380,160 for these improvements. MTAB Hrg. Transcr. 21:00-23:00.

26. Ms. Greenberg testified that the DOR used a land sales model to determine a land value of \$493,922 for the subject property. Ex. G, MTAB Hrg. Transcr. 28:45-29:25. The land model for the subject property is based upon 23 sales of commercial properties, located in several central Missoula neighborhoods, that occurred in 2014 and 2015. Ex. G, MTAB Hrg. Transcr. 29:45-30:15.

27. Ms. Greenberg testified that the DOR's land model indicated that there were properties that sold for more than what was typical, and those sales are designated with a "1" in the "land size" column for prime location, as well as properties that sold for less than what was typical, and those sales are designated with a "1" in the "size-shape" column. Ex. G, MTAB Hrg. Transcr. 32:30-33:35.

28. The land model indicated that a commercial lot of 10,000 square-feet had a market value of \$23.77 per square-foot, whereas the model indicated that a commercial lot of the same size located in a prime location had a market value of \$47.84 per square feet, and the less desirable lots had a market

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value of \$9.70 per square foot. *Id.* The model calculated a residual value of \$6.47 per square foot for each square foot of a lot in excess of the base size of 10,000 square feet, regardless of its location or desirability. Ex. G.

29. The Wohl's property was valued with a prime location influence code shown on the property record card as FR1. Exs. B,G. Ms. Greenberg testified that the market indicated that commercial properties with high traffic count, high visibility and easy access are selling for more than properties that lack those characteristics, and because the subject property has all three characteristics the DOR valued it as a prime location. MTAB Hrg. Transcr. 35:15-50.

30. Ms. Greenberg acknowledged that the Wohl's parcel is the only parcel on either side of the street in the block that was valued using the prime location influence factor. MTAB Hrg. Transcr. 43:30-40. Ms. Greenberg testified that the prime location was applied as initial spill-over from Reserve, and she stated that if the Wohls had filed an AB26 review she very likely would have changed the prime location influence factor because she either missed including the entire block or she inadvertently included the Wohls. MTAB Hrg. Transcr. 43:40-46:00.

31. Ms. Snyder testified that if the prime location influence code was removed from the Wohl's property, the land value would be reduced to roughly \$253,000. MTAB Hrg. Transcr. 57:00-15. Ms. Snyder testified that she was not certain how the change in land value would affect the overall market value of the land and improvements using the income approach to value. MTAB Hrg. Transcr. 57:15-57:45.

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

CONCLUSIONS OF LAW

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

34. 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.

35. "Assessment formulations are within the expertise of the State Tax Appeal Board and [courts] will not overturn their decisions unless there is a clear showing of an abuse of discretion." *Northwest Land & Dev. of Montana, Inc. v. State Tax Appeal Bd.*, 203 Mont. 313, 317, 661 P.2d 44, 47 (1983) overruled on other grounds by *DeVoe v. Dep't of Revenue of State of Mont.*, 263 Mont. 100, 866 P.2d 228 (1993).

Burden of Proof

36. 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).

37. 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.

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Assessment

38. “All taxable property must be appraised at 100% of its market value....”
Mont. Code Ann. § 15-8-111.
39. This Board concludes, based on the uncontroverted testimony of the DOR’s witnesses, that the Wohl’s land should not have been valued using the prime location influence factor because it was the only property on the block with the influence factor and it does not differ significantly from the other parcels. Therefore, this Board will order the DOR to remove the FR1 designation from the land category and set the value of the land at \$252,922, to match the value of the adjoining parcel of identical size that was not valued using the FR1 designation.
40. This Board has further concerns that the DOR’s value is correct when considering the rent rating used in the income model. The income model reaches an overall value for the property without distinguishing between the land and improvements, and allocates to the land the value as determined by the same land model used in the cost approach, and then assigns the difference to the improvements value. This would seem logical, but this Board heard testimony from the DOR witnesses that the rent rating assigned to the subject property of \$11.75 was a typical rent rating for a commercial building in Missoula. The Board also received credible testimony from Mr. Wohl that his actual rent is \$3.26, an amount he had to lower in 2015 in order to keep his tenant and not suffer a vacancy. This discrepancy between the modeled and actual rental rates is significant and this Board does not have enough information to make a reasoned decision about what the market rental amount for this property ought to be in order

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to determine a credible market value using the income approach that the Board can then allocate to the land and the improvements.

41. Therefore, this Board finds that the market value of the land is the value as determined by the DOR's land model, without the FR1 influence code, and adopts the improvements value of \$373,978, as determined by the DOR using the income approach and not appealed by the taxpayers.
42. As this Board stated in its June 4, 2018 Order as to Appellant's May 21, 2018 Letter, this Board is not vested with jurisdiction to determine whether any of the DOR's actions violated the Taxpayer's Bill of Rights set forth in M.C.A. §15-1-222.

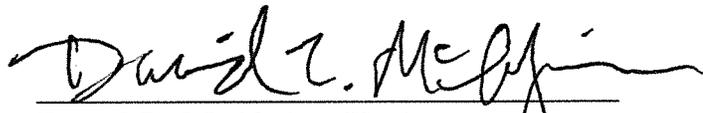
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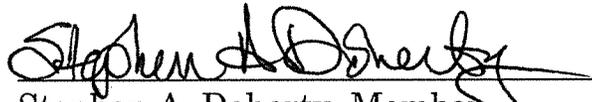
ORDER

44. Glen and Johanna Wohl's appeal and complaint is **granted in part**.
45. DOR shall remove the FR1 influence factor used to value the land and enter a value of \$252,922 for the land and \$373,978 for the improvements for a total market value of \$626,900 for tax years 2017-2018.

Ordered October 5th, 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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Certificate of Service

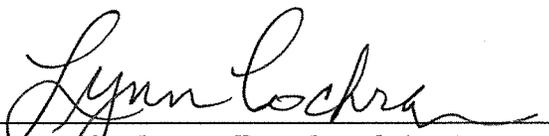
I certify that I caused a true and correct copy of the foregoing *Findings of Fact, Conclusions of Law, Order, and Opportunity for Judicial Review* to be sent by United States Mail via Print and Mail Services Bureau of the State of Montana on October 5, 2018 to:

Glen & Johanna Wohl
2610 Glen Drive
Missoula, MT 59804

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

Missoula County Tax Appeal Board
c/o Cyndi Aplin
Courthouse- 200 West Broadway
Missoula, MT 59802-4292

Property Assessment Division
Kory Hofland
Montana Department of Revenue
P.O. Box 8018
Helena, MT 59604-8018


Lynn Cochran, Paralegal Assistant