

THE MONTANA TAX APPEAL BOARD

CRESTVIEW OFFICE, LLC,)	DOCKET NO.: PT-2013-19
)	
Appellant,)	
)	
-vs-)	FINDINGS OF FACT,
)	CONCLUSIONS OF LAW,
DEPARTMENT OF REVENUE)	ORDER and OPPORTUNITY
OF THE STATE OF MONTANA,)	FOR JUDICIAL REVIEW
)	
Respondent.)	

Statement of Case

Crestview Office, LLC (Taxpayer) appealed a decision of the Missoula County Tax Appeal Board (CTAB) relating to the Department of Revenue's (DOR) valuation of its office building at 4404 Expressway in Missoula, Montana. Taxpayer argues the DOR overvalued the property for tax purposes, and seeks a reduction in value assigned by the DOR. At the Montana Tax Appeal Board (Board) hearing held on April 22, 2014, the Taxpayer was represented by R. Scott Hacker, managing member, who provided testimony and evidence in support of the appeal. The DOR was represented by Tax Counsel Teresa Whitney, Commercial Appraiser Michael Hartkorn, and Area Manager Wes Redden, who presented testimony and evidence in opposition to the appeal.

The Board having fully considered the testimony, exhibits, post-hearing submissions and all matters presented, finds and concludes the following:

Issue

The issue before this Board is whether the Department of Revenue determined an appropriate market value for the subject property for tax year 2013.

Summary

Crestview Office, LLC is the Taxpayer in this proceeding and, therefore, has the burden of proof. Based on a preponderance of the evidence, the Board upholds the Department of Revenue's valuation.

Evidence Presented

1. The subject property is an office building, and the land upon which it is situated, with the following legal description:

That portion of Tract B COS 2989 being NE or Por
A Cos 3891, comprised of 1.17 acres in Section 6,
Township 13 North, Range 19 West, and the
improvements located thereon, City of Missoula,
County of Missoula, State of Montana, Geocode
#04-2200-06-1-01-40-0000. Appeal Form.
2. The subject office building includes 13,257 total square feet of enclosed space. Some of that total is finished office space, some is unfinished space with the potential to be finished to a renter's specifications, and some square footage is common hallways and common bathrooms. DOR CTAB Exh. C, property record card.
3. In response to continued building upgrades, DOR updated the percent complete of the subject property, which led to the present appeal.
4. For tax year 2013, the DOR appraised the subject land at a value of \$209,112 and the improvements at a value of \$787,400. Taxpayer Administrative Hearing Status Questionnaire, p. 1.

5. Taxpayer filed for informal review with the DOR on June 7, 2013. After review, DOR made no adjustment to its assessment. DOR Administrative Hearing Status Questionnaire, p. 1.
6. Taxpayer filed an appeal with the Missoula County Tax Appeal Board (CTAB) on July 30, 2013, requesting a reduction in land value to \$100,000 and in the improvement value reduction to \$451,538, stating: "Office building's shell was constructed in 2006. To date, approximately 50 percent of the building space is finished and leased. Given the time lapsed, no net additional lease-up is foreseen. The proper way to value the property (land & building) is the income approach based on income in-place. NOI 1/13 – 6/13 = 425,457. Annualized NOI = 450,914. Cap Rate = 9.0%. value = \$565,711." Appeal Form.
7. The Missoula CTAB heard the appeal on December 10, 2013, and upheld the DOR value for the subject property. Appeal Form.
8. The Taxpayer appealed to this Board on January 9, 2014, stating: "The County Tax Appeal Board based its valuation on a hypothetical and unrealistic income-based valuation. This valuation is described in paragraph 5 of the attached decision. The appellant's valuation is based on actual income in-place." Appeal Form. Taxpayer believes the most reliable method to find market value of his property is an income approach model.
9. In both the CTAB and this Board's hearings, the Taxpayer challenges the DOR's valuation methodology and presented different income formulas for calculating the value of his property.
10. The Taxpayer testified during the hearing that using the cost method to set the value of this property was not practical from a business

perspective as he could not sell the partially occupied building for the value set by DOR, arguing against the notion that the taxable value of the subject set by DOR was a fair market value.

11. When creating his income approach, the Taxpayer testified that he did not include common areas, bathrooms, or stairways in his calculation of square feet for the income-based property valuation he advocated.
12. Taxpayer testified that finishing the remainder of the building would cost approximately \$320,000 at \$56.14/square foot, which he argues devalues the property significantly more than the DOR value. CTAB Tr., p. 6.
13. DOR Commercial Appraiser Hartkorn testified that he valued the property using a cost approach and set a 60 percent complete value. Thus, the DOR calculated the value of the land and the improvements separately, and added those values for a final determination of value. Montana Tax Appeal Board hearing, April 22, 2014.
14. The cost approach methodology projects a value based upon the cost of constructing that building using common costs of specific construction techniques. Testimony Hartkorn.
15. Appraiser Michael Hartkorn testified that, per administrative rule, all valuation of unfinished commercial property must default to the cost methodology for setting value. Testimony Hartkorn. *See also* ARM 42.20.107(3).
16. Appraiser Hartkorn cited Montana Administrative Rule 42.20.107 as authority for his method of valuation. Paragraph three of that rule states "If the department is not able to develop an income model with a valid capitalization rate based on the stratified direct market analysis, the band-of-investment method, or another accepted method, or is not able

to collect sound income and expense data, the final value chosen for ad valorem tax purposes will be based on the cost approach or, if appropriate, the market approach to value. The final valuation is that which most accurately estimates market value.”

17. DOR appraiser Hartkorn testified that, while the DOR did calculate a value under an income approach, he chose to set value via a cost approach as required by administrative rule. DOR appraiser Hartkorn reasoned that using an income approach to value unfinished commercial properties is very difficult to defend because of the challenge of finding any supporting comparable properties that are similar to the subject in both size/quality and also the percent finished.
18. Appraiser Hartkorn further testified that DOR was following best practices as outlined in the International Association of Assessing Officials (IAAO) manual by valuing this unfinished commercial property using a cost-based methodology. MTAB hearing testimony.
20. Hartkorn testified that, if he had determined a value by using income methodology, he would have estimated unoccupied space in the subject to be utilized for multi-use rental storage to include 100 percent of the interior space in the valuation (50 percent office space/50 percent multi-use storage.) He contended that this calculation would have produced a value of \$955,000, higher than the value when the cost method is applied.
21. Hartkorn also testified that he set the building grade as though it were a garage/storage building, which has a lower per-square-foot value.
22. Hartkorn further testified that Taxpayer’s requested value of \$451,538, using Taxpayer’s income model, is unrealistic as it would set the value

below the \$598,978 value agreed to by Taxpayer in 2009, before he made improvements. He stated this theory was not realistic after five subsequent building improvement projects.

23. Taxpayer did not provide testimony or exhibits to refute the DOR land or building valuation, but solely relied on his own valuation calculations.

Principles of Law

1. The State Tax Appeal Board has jurisdiction over this matter.
Section 15-2-301, MCA.
2. All taxable property must be assessed at 100 percent of its market value except as otherwise provided. Section 15-8-111, MCA.
3. 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. Section 15-8-111(2) (a), MCA.
4. When determining the market value of commercial properties, DOR appraisers will consider, if the necessary information is available, an income approach valuation. If the department is not able to develop an income model with a valid capitalization rate based on the stratified direct market analysis, the band-of-investment method, or another accepted method, or is not able to collect sound income and expense data, the final value chosen for ad valorem tax purposes will be based on the cost approach or, if appropriate, the market approach to value. The final valuation is that which most accurately estimates market value.
42.20.107, ARM.

5. The appraised value supported by the most defensible valuation information serves as the value for ad valorem tax purposes. ARM 42.18.110(12).
6. The state tax appeal board must give an administrative rule full effect unless the board finds a rule arbitrary, capricious, or otherwise unlawful. Section 15-2-301(4), MCA.

Board Discussion, Findings of Fact and Conclusions of Law

The Board must determine, based on a preponderance of the evidence, whether the DOR set an appropriate valuation for the subject property for tax year 2013.

As a general rule, the appraisal of the Department of Revenue is presumed to be correct and the Taxpayer must overcome this presumption. The DOR should, however, bear a certain burden of providing documented evidence to support its assessed values. *Farmers Union Cent. Exch. v. Department of Revenue*, 272 Mont. 471, 901 P.2d 561, 564 (1995); *Western Airlines, Inc., v. Michunovich*, 149 Mont. 347, 353, 428 P. 2d 3, 7, *cert. denied* 389 U.S. 952, 19 L. Ed. 2d 363; 88 S. Ct. 336 (1967).

The DOR may use different approaches (for example, market, income, and/or cost approaches), depending on available data, to appraise a property. *See, e.g., Albright v. Montana Department of Revenue*, 281 Mont. 196, 933 P.2d 815, (1997).

At issue is both the timing and valuation methodology of the subject property. The Taxpayer does not agree that the DOR should use cost approach to valuation, and would rather use an income methodology calculated after the valuation date of 2008, and with less than the full square footage of the property. The Department, however, notes that it must value the total

property as it was on the date of appraisal in 2008. DOR contends that an unfinished building cannot be valued using the income approach, as there is insufficient data available.

This Board finds the evidence presented by the DOR did support the use of the cost methodology, and that the Taxpayer failed to provide any evidence that challenged the DOR valuation. There is no indication that the administrative rule directing the DOR to use the cost approach on unfinished commercial property is arbitrary, capricious, or incorrect in this case.

Taxpayer's attempt at using the income model for valuation falls short when unoccupied space in the subject property is not valued under his model, because the unfinished space would surely have value to a potential purchaser. Further, there is no indication that the Taxpayer's alternative valuation methodology is a more proper valuation method than the Department's method.

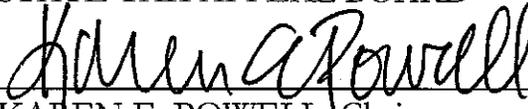
It is the opinion of this Board that the assessed value set by the DOR is correct.

Order

IT IS THEREFORE ORDERED by the State Tax Appeal Board of the State of Montana that the subject property value shall be entered on the tax rolls of Missoula County at a 2013 tax year value of \$209,112 for the land and \$787,400 for the improvements, as determined by the Department of Revenue and affirmed by the Missoula County Tax Appeal Board.

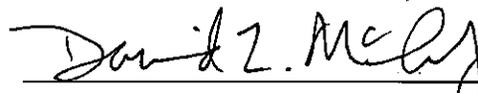
Dated this 23rd of May, 2014.

BY ORDER OF THE
STATE TAX APPEAL BOARD


KAREN E. POWELL, Chairwoman

(SEAL)


SAMANTHA SANCHEZ, Member


DAVID L. McALPIN, 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 27th day of May, 2014, 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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