

BEFORE THE MONTANA TAX APPEAL BOARD  
OF THE STATE OF MONTANA

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ELINA McCRONE,	)	DOCKET NO.: PT-2013-16
	)	
Appellant,	)	
	)	FINDINGS OF FACT,
-vs-	)	CONCLUSIONS OF LAW,
	)	ORDER and OPPORTUNITY
THE DEPARTMENT OF REVENUE	)	FOR JUDICIAL REVIEW
OF THE STATE OF MONTANA,	)	
	)	
Respondent.	)	

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**Statement of Case**

Elina McCrone (Taxpayer) appealed a decision of the Yellowstone County Tax Appeal Board (CTAB) relating to the Department of Revenue's (DOR) valuation of her property identified as Lots 10-12, Block 114, Billings Original Townsite, Yellowstone County, State of Montana. The Taxpayer argues the DOR overvalued the property for tax purposes, and seeks a reduction in value assigned by the DOR. The Montana Tax Appeal Board (Board) elected to hear the appeal on the record. All parties were afforded the opportunity to provide additional written testimony and exhibits.

The Board having fully considered the testimony, exhibits and all matters presented, finds and concludes that the Department properly valued the commercial property and that the Yellowstone County Tax Appeal Board properly upheld that value.

### 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

Elina McCrone is the Taxpayer in this proceeding and, therefore, has the burden of proof to show the DOR erred in valuing the subject property. Based on a preponderance of the evidence, the Board affirms the decision of the Yellowstone County Tax Appeal Board.

### Evidence Presented

1. The subject property is a commercial property, originally appraised by DOR at a total of \$562,300, and located at 2223 Montana Avenue in Billings with the following legal description:  

Lots 10-12, Block 114, Billings Original Townsite, County of Yellowstone, State of Montana, and the improvements located thereon. Geocode #03-1033-33-3-10-01-0000.  
(Appeal Form.)
2. Edward and Elina McCrone purchased the subject property on April 25, 2007, for \$499,000. DOR CTAB Exh. B, p. 1.
3. The building is a 24,075 square foot commercial historical brick building in downtown Billings that was operating as an antique mall at the time of purchase.
4. All Montana class-four properties (residential and commercial) were valued for the 2008- 2014 appraisal cycle on a common date, July 1, 2008. This practice is in accordance with Montana law. Section 15-7-111, MCA, ARM 42.18.107.
5. On September 28, 2009, Edward and Elina McCrone filed an AB-26 form

for informal property valuation review by the DOR. DOR CTAB Exh. A, p. 12.

6. The 2009 AB-26 review resulted in a total property value reduction from \$562,300 to \$518,531. The modification was a result of a time-adjustment of the 2007 sale price to the statewide lien date of July 1, 2008. Of the \$518,531 value for the entire property, a value of \$66,475 was attributed to the land and a value of \$452,056 to the improvements. DOR CTAB Exh. A., p. 12; DOR CTAB Exh. B, p. 1.
7. Following the initial AB-26 review, Mr. McCrone transferred the property via quit claim deed to his wife, Elina, and she filed another AB-26 for tax year 2013. DOR made no further adjustment.
8. On October 2, 2013, Taxpayer filed an appeal of the 2013 AB-26 denial with the Yellowstone CTAB, requesting a value of \$40,000 for the improvements and \$30,000 for the land. Appeal Form, DOR CTAB Exh. A., pp. 13 and 17; DOR Response to Administrative Hearing Status Questionnaire, p. 2.
8. The Yellowstone CTAB heard the appeal on October 30, 2013 and upheld the DOR value for the subject property. That decision was appealed to the Montana Tax Appeal Board. Appeal Form.
9. The property was partially rented when purchased by the McCrones. Through a miscommunication with the seller, the tenants vacated the building. The McCrones have not been able to find any tenant to rent the space since the 2007 purchase. Testimony Edward McCrone, CTAB transcript, page 7, lines 11-25.

10. Since purchasing the building, the McCrones have found numerous functional flaws in the building, which make the property expensive to update and difficult to rent. Testimony Edward McCrone, CTAB transcript, page 8.
11. The McCrones testified they were not aware of needed improvements to major systems such as elevator, fire safety sprinklers, or limited public parking when they purchased the building. Nor did the McCrones ask the seller for income and expense statements for the property when negotiating purchase of the building. CTAB transcript pages 8 and 17.
12. The Taxpayer submitted expense and income estimates for years 2007-2010 showing financial losses for each year. She contends the income approach should be used to set value and, using her own income figures under the income method, the value of this unoccupied property should be zero. Taxpayer's Exh. 3.
13. DOR argues that it is bound by rule and law to estimate a value for the building as if it had occupancy typical of the area. DOR's testimony of the typical income valuation method would indicate a tax value in excess of the purchase price method actually used to set present market value because income valuation would be based on the income and vacancy rates typical of such commercial properties.
14. DOR set value based on an adjusted purchase price model as allowed by Administrative Rule 42.20.454. Starting with the sale price in April of 2007, the subject value was time-trended forward to the appraisal cycle lien date of July 1, 2008. That

value was lower than a similar income valuation model for the property, and was thought to be a more accurate method of valuation than income in this instance.

15. During the CTAB hearing, DOR provided an example of a comparable property across the street from the subject, which sold for a similar adjusted price within a few months of the subject, was rehabilitated, and has been consistently occupied. DOR Exh. D.
16. Taxpayer offered no evidence of comparable properties to support her requested value for the 24,075 square foot building.

#### **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% 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, department appraisers will consider, if the necessary information is available, an income approach valuation. The final valuation is that which most accurately estimates market value. ARM 42.20.107.
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 Montana 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.

**Findings of Fact, Conclusions of Law, and Board Discussion**

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 by the Department of Revenue is presumed to be correct and the Taxpayer must overcome this presumption. The Department of Revenue 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).

Under the income method of valuation, the Department is required to calculate potential gross income even if a property is vacant, using typical income and vacancy rates. The goal is to find the market value as calculated in the same manner that potential buyers of commercial property would judge the property, i.e., by the income they can earn from it. If all taxpayers were able to have values reduced or eliminated due to a lack of income, this would be an

illogical disincentive to business and would base value on the management abilities or choices of the owners. ARM 42.20.107

With regard to the use of the sale price as an indicator of value, Taxpayer did not submit any evidence of comparable sales where the improvements were valued according to her contentions, nor did the Taxpayers present evidence refuting the property across the street that was used by DOR as an example of comparison. Taxpayer continues to market the property at more than the 2007 sales price, despite her request in the appeal for this Board to value the improvements at \$2,000.

It is a well-established principle of valuation that the best indication of true market value is a willing-buyer, willing-seller transaction. We find that the DOR's decision to use market indicators rather than income indicators to be a reasonable choice, and we note that the resulting valuation is lower than a valuation based on income would have been.

Thus, it is the opinion of this Board that the assessed value set by the DOR is reasonable and the decision of the Yellowstone County Tax Appeal Board is affirmed.

Order

IT IS THEREFORE ORDERED by the Montana Tax Appeal Board of the State of Montana that the subject property value shall be entered on the tax rolls of Yellowstone County at a 2013 tax year value of \$518,531, as determined by DOR and affirmed by the Yellowstone County Tax Appeal Board.

Dated this 1<sup>st</sup> of May, 2014.

BY ORDER OF THE  
STATE TAX APPEAL BOARD



KAREN E. POWELL, Chairwoman



SAMANTHA SANCHEZ, Member



DAVID L. McALPIN, Member

(SEAL)

**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 15<sup>th</sup> 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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 Hand Delivered  
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Commercial Appraiser  
Yellowstone Co. Appraisal Office  
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Billings, Montana 59101-2089

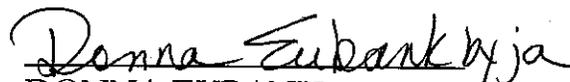
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