

BEFORE THE STATE TAX APPEAL BOARD  
OF THE STATE OF MONTANA

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RAINBOW SENIOR LIVING OF GREAT FALLS,	)	
	)	DOCKET NO.: PT-2013-8
Appellant,	)	
-vs-	)	FACTUAL BACKGROUND,
	)	CONCLUSIONS OF LAW,
THE DEPARTMENT OF REVENUE OF THE STATE OF MONTANA,	)	ORDER and OPPORTUNITY
	)	FOR JUDICIAL REVIEW
Respondent.	)	

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Rainbow Senior Living of Great Falls (Taxpayer) appealed a decision of the Cascade County Tax Appeal Board (CTAB) relating to the Department of Revenue (DOR) value on a commercial establishment in Great Falls, Cascade County, State of Montana. The Taxpayer argues the DOR overvalued the property for tax purposes, and seeks a reduction in values assigned by the DOR. At the State Tax Appeal Board (Board) hearing held on October 3, 2013, the Taxpayer was represented telephonically by Samuel Pinter, who provided testimony and evidence in support of the appeal. The DOR was represented by Amanda Myers, Tax Counsel. Brenda Ivers, Appraiser and Chuck Pankratz, Regional Manager, provided testimony on behalf of the Department.

**Issue Presented**

The issue before this Board is whether the Department of Revenue erred in valuing the subject property for tax purposes for tax year 2013.

## Summary

Rainbow Senior Living of Great Falls is the Taxpayer in this proceeding and, therefore, has the burden of proof. Based on a preponderance of the evidence, the Board affirms the decision of the Cascade County Tax Appeal Board.

### Evidence Presented

1. Due, proper and sufficient notice was given of this matter and of the time and place of the hearing. All parties were afforded opportunity to present evidence, verbal and documentary.
2. The subject property is a 106-room assisted living facility described as follows:  
Lots 1-7, Block 313, Great Falls Original Townsite, County of Cascade, State of Montana, with a street address of 20 3<sup>rd</sup> Street North, Great Falls, Montana.  
(Appeal Form.)
3. For tax year 2013, the DOR appraised the subject property at a land value of \$262,725 and an improvement value of \$7,839,100. (Appeal Form.)
4. The Taxpayer filed a Request for Informal Review (AB-26), asking for an informal review meeting due to dissatisfaction with the DOR appraisal. (AB-26 form.)
5. DOR conducted an internal and an external review on May 8, 2013. As a result of this review, the DOR reduced the building value to \$4,763,700, yielding a total property value of \$5,026,425 for tax year 2013. No change was made to the land value. The following reasons were cited for the \$3,075,400 reduction in improvement value:

After review of the building, an adjustment of the functional utility of the building based on the "use" type of nursing home was reduced to fair from typical, as well as "use" type per floor changed to reflect apartment setting & office use for radio station area as well as the Mezzanine office area. Basement use is support & small area allocated for bar area. Building value now will be \$4,795,150 (sic) = \$44.11 sq. ft. Replacement Cost New less depreciation for a building 102 years old. (AB-26 form.)

6. The Taxpayer filed an appeal with the Cascade CTAB on June 3, 2013 asking for a land value of \$200,000 and an improvement value of \$1,400,000, stating:

Overvalue (sic) by 300% due to recent sale in 2013 – purchased for \$1.6 million.  
(Appeal Form.)
7. The Cascade CTAB heard the appeal on July 18, 2013. The Cascade County CTAB upheld the DOR values.
8. The Taxpayer appealed to this Board on July 22, 2013, stating:

We purchased this property 3 months ago for only \$1.6 million, after it was on the market for 12 months. In addition, since the purchase we have lost 10% of the residents. (Appeal Form.)
10. The State Tax Appeal Board accepted the appeal, and set a hearing in the matter.
11. During the October 3, 2013 hearing, Mr. Pinter emphasized that he paid \$1.6 million for the subject property in 2013, therefore he should not be subject to a 2008 valuation higher than the sales price. He argued that the income approach should have been used relying on 2013 data of the recent and present occupancy of the property to support the 2013 \$1.6 million sales price as the true indicator of market value for the property. He contended that the recent sale price was the true indicator of market value for the subject property.
12. Mr. Pinter testified that he purchased the property on the expectation of income generated by 75% occupancy, and the property now only maintains a 65% occupancy. He believes the income method, using occupancy data, would be the most appropriate way to value the property.
13. DOR used the cost approach for valuing the subject property. Ms. Ivers testified that all similar properties were valued using the cost approach, because it was the best data available for valuation during the appraisal cycle.
14. DOR witnesses Ivers and Pankratz testified that the use of an income approach

for rest home and assisted living facilities had not been a reliable indicator of value in the past due to the variability of income factors and charges for the lityny of different care services which may be offered to elderly or ill clients. For these reasons, the DOR witnesses testified that they have consistently used the cost approach as the best and most consistent method of valuation for these types of properties across Montana. The Department witnesses testified that they have used the cost approach of valuation for all similar rest home/assisted living properties in this appraisal cycle.

15. Ms. Ivers additionally testified for DOR that it is bound by state rules and law to set a valuation on the subject property and all other properties in Montana with an effective date of July 1, 2008. Property values cannot be revised based on newer data or recent sale prices of subject properties.
16. Ms. Ivers further testified that, during the informal review process, she adjusted the grade of the subject property downward from fair to typical with regard to the functional utility of the use of the building. (DOR Exh. C.) The property record card for the subject property reflects a reduced valuation of \$4,763,700, or an average value per square foot of \$43.58. (DOR Exh. A.)
17. At the County Tax Appeal Board hearing, Ms. Ivers testified that the Rainbow Assisted Living facility valuation of \$43.58 per square foot value was lower than comparable properties such as the Downtowner Assisted Living facility, with a valuation of \$48.57 per square foot, or Cambridge Court Assisted Living facility at \$54.25 per square foot.
18. Taxpayer's representative, however, indicated during CTAB testimony that the subject property is superior to both referenced properties. ("That thing is not as nice as ours." Ms. Skinner, p. 28 of CTAB transcript.)

19. The State Tax Appeal Board record was held open to afford Mr. Pinter the opportunity to submit further documentation. On October 8, 2013, he provided November 2012 trailing income statements for Rainbow Assisted Living showing a loss in income for the property. (Taxpayer post-hearing submission/income statement.)
20. The DOR responded to the submission on October 16, 2013 reiterating that, because of equalization, it is precluded from utilizing an income approach to valuing the subject property. The DOR also noted that the income information provided by the Taxpayer was for 2012, and state law dictates valuation on July 1, 2008 for the current appraisal cycle.

#### **Principles of Law**

1. The State Tax Appeal Board has jurisdiction over this matter. (§15-2-301, MCA.)
2. All taxable property must be assessed at 100 percent of its market value except as otherwise provided. (§15-8-111, MCA.)
3. For the taxable years from January 1, 2009 through December 31, 2014, the Department of Revenue appraised all class four properties at market value as of July 1, 2008. (ARM 42.18.124 (1) (b).) Class four property generally includes residential and commercial property, including the property at issue in this matter. *See* §15-6-134, MCA.
4. The appraised value supported by the most defensible valuation information serves the value for ad valorem tax purposes. (ARM 42.18.110 (12).)
5. The state tax appeal board must give an administrative rule full effect unless the board finds a rule arbitrary, capricious, or otherwise unlawful. (§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 of 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 is charged with appraising the property at full market value pursuant to §15-8-111, MCA.

In this instance, the DOR provided evidence relating to the valuation of the subject property. The DOR brought detailed information on its cost approach calculations, including how the DOR addressed the aging nature of the building and the need for repair. During the informal appeal, the DOR adjusted for the failing building systems such as roofing and HVAC by reducing the rating for building quality, thus lowering its valuation for tax purposes. (EP #16.)

The record further indicated that DOR did take into consideration the quality of the building and adjusted that rating to a lower value. The record indicated that, when compared by square-foot values, the property is valued below other similar properties in Great Falls, which we find to be credible evidence in support of the contention that the DOR's valuation of the subject property is reasonable. (EP #17.)

We find the Taxpayer did not submit credible evidence that the DOR made any error in its valuation of the subject property. The only evidence provided by the Taxpayer was a balance sheet for 2012 which is well past the statutory timeframe for which the subject property's value was set (July 1, 2008), and the testimony of a 2013

sales price for the subject property of \$1.6 million. Mr. Pinter did not provide further documentation of his professed valuation of \$1.6 million for the subject property. (EP #11, POL #3.) Neither item is persuasive because the information addresses values several years after the DOR valuation date of July 1, 2008.

The Taxpayer's charge is to show by clear, cogent, and convincing evidence the Department erred in establishing the value. The evidence before the Board does not meet this standard. Thus, the Board concludes the Taxpayer has not met the burden of showing by a preponderance of the evidence that the Department overvalued the subject property. The Board finds the evidence supports the Department's value for the 2013 assessment year.

Thus, it is the opinion of this Board that the decision of the Cascade County Tax Appeal Board is affirmed.

Order

IT IS THEREFORE ORDERED by the State Tax Appeal Board of the State of Montana that the subject property's value shall be entered on the tax rolls of Cascade County at the value determined by the DOR and affirmed by the Cascade County Tax Appeal Board.

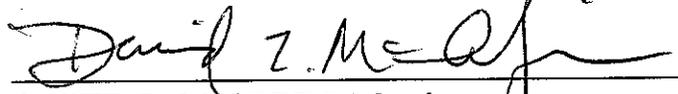
DATED this 14<sup>th</sup> day of November, 2013.

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 14<sup>th</sup> day of November, 2013, 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:

Rainbow Senior Living of Great Falls  
805 Avenue L  
Brooklyn, New York 11230

U.S. Mail, Postage Prepaid  
 Hand Delivered  
 E-mail

Cascade County Appraisal Office  
300 Central Avenue Suite 520  
Great Falls, Montana 59401-4093

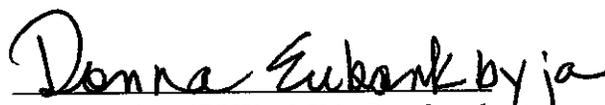
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Jan Fulbright, Secretary  
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DONNA J. EUBANK, Paralegal