

BEFORE THE STATE TAX APPEAL BOARD  
OF THE STATE OF MONTANA

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JoAnn Reilly )  
Appellant, ) DOCKET NO.: PT-2003-56  
-vs- )  
THE DEPARTMENT OF REVENUE ) FACTUAL BACKGROUND,  
OF THE STATE OF MONTANA, ) CONCLUSIONS OF LAW,  
Respondent. ) ORDER and  
 ) OPPORTUNITY FOR  
 ) JUDICIAL REVIEW  
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The above-entitled appeal was heard on March 3, 2005, in Butte, Montana, in accordance with an order of the State Tax Appeal Board of the State of Montana (Board). The notice of the hearing was duly given as required by law. JoAnn Reilly (Taxpayer) was represented by her husband and agent, Dan Reilly. The Taxpayer presented evidence and testimony in support of the appeal. The Department of Revenue (DOR) was represented by Appraiser Joe Rask and Area Manager Lori Casey. DOR presented evidence and testimony in opposition to the appeal.

The duty of this Board is to determine the appropriate market value for the property based on a preponderance of the evidence. By statute (15-2-301, MCA) this Board may affirm, reverse or modify any decision rendered by the county tax appeal board. Testimony was taken from both the

Taxpayer and the Department of Revenue, and exhibits from both parties were received.

The Board modifies the decision of the Butte/Silver Bow County Tax Appeal Board (CTAB) and sets a total value of \$120,320 for the land, the house, and the commercial improvements of the subject property.

#### **FACTUAL BACKGROUND**

1. Due, proper, and sufficient notice was given of this matter, the hearing, and of the time and place of the hearing. All parties were afforded opportunity to present evidence, oral and documentary.

2. The subject property is commercial in character and described as follows:

**The East 220 feet of Lot 24, Section 31, T3N, R7W, and improvements at 1736 Longfellow in Butte, Montana; Assessor ID #000953500.**

3. The subject property consists of a mobile home park with 15 spaces, a house, and the underlying real property of approximately 1.650 acres. Although the Taxpayer also owns the mobile homes in the park, the valuation of the mobile homes was settled through a separate appeal process and is not a part of this appeal. (Transcript of CTAB hearing, pages 12 - 24).

4. For tax year 2003, the Department of Revenue originally appraised the subject property at \$25,233 for the land, \$13,280 for the house and \$120,300 for the mobile home park commercial improvements for a total of \$158,813.

5. The Taxpayer filed an AB-26 property review form. Based on this informal review, the DOR made a minor adjustment in the land value saying:

**Lot rents and vacancy are consistent with our MOB Park model no adjustment made. Dwelling on site is listed as poor cond with very poor utility for location/ Adj land value Tot from \$120,307 [sic] to \$112,807 [sic].**

6. The Taxpayer filed an appeal with the Butte/Silver Bow County Tax Appeal Board on October 27, 2003, requesting a value of \$10,000 to \$20,000 for the land, and \$50,000 for the commercial improvements. The Taxpayer agreed with the DOR valuation of \$13,280 for the house.

7. In its December 13, 2003 decision, the CTAB denied any reduction in value, saying:

**The Board finds that the Dept of Revenue's valuation is correct and warrants no adjustment.**

8. The Taxpayer appealed the valuation to this Board on January 9, 2004, citing the following reason for the appeal:

**We feel the trailer park is inferior to other parks in Butte. Example: Valley Vista sold around \$150,000 having 51 lots and is superior to Butte Trailer Park of 15 lots. We feel an appraisal should take into consideration the physical, functional, and economic depreciation of the park.**

8. The Board originally set the hearing on this appeal for July 21, 2004. This hearing date was vacated at the request of the DOR. Subsequently, the hearing was re-scheduled and held on March 3, 2005.

#### **TAXPAYER'S CONTENTIONS**

The Taxpayer contends that the value of the subject property should be lower because the owner does not make any money on this mobile home park. The Taxpayer testified that there is a lot of functional obsolescence in this property and that they cannot put modern trailers in without re-doing the pedestals. The Taxpayer also stated that the value of the subject property is in the land. According to the Taxpayer, a mobile home park is not the highest and best use of the land.

Taxpayer's Exhibit 2 is a Standard Commercial Listing Contract dated November 25, 2003, which shows a listing price of \$150,000 for the subject property and the 12

mobile homes on it. The value being appealed is \$151,313 for the property and improvements, not including the mobile homes. The Taxpayer testified that this potential sale of the property at \$150,000 fell through when he disclosed the water, sewer, and other problems with the park, which he is obligated to do.

Taxpayer's Exhibit 3 is a Multi-Listing Service real estate listing for 1.54 acres of vacant land about four blocks west of the Reilly property. This land sold for \$35,000 in June 2004. The Taxpayer testified that the subject property, because it is in a better location, is worth at least twice as much as the comparable property detailed in Exhibit 3.

#### **DOR CONTENTIONS**

At the outset of the hearing, DOR notified the Board and the Taxpayer that the DOR's value for the commercial improvements of the subject property should be reduced by \$7500. Because DOR uses the income approach for valuing the mobile home park, the value of the land, including the land under the house (valued at \$7500) needs to be deducted from the value of the commercial improvements. DOR has not done so. With this adjustment, DOR's value for the commercial improvements becomes \$105,300 and the total value of the subject property drops down to \$143,813.

DOR Exhibit B is a copy of the property record cards for the subject property. The house and land are on one card. The commercial improvements and land are on a second card. The second property record card demonstrates that DOR values the mobile home park using the income approach. Mr. Rask testified, "Even though the mobile home park, the condition is not the greatest, it is still an income producing property and it does produce income."

Exhibit C includes the AB-26 form, three years' actual income and expense data from the Taxpayer for the mobile home park, and a spreadsheet summarizing the income and expense data and comparing it to the DOR's income model for mobile home parks. According to the DOR, the comparison in the spreadsheet demonstrates that their value for the subject property is appropriate.

DOR noted that there were not enough local mobile home park sales in Silver Bow County to develop a local model for the income approach. Thus, the DOR used income models from other areas of the state and adopted a statewide capitalization rate in their valuation of the subject. The rent rate used in their income model was \$145 per space per month. DOR Exhibit D is a list of eight mobile home parks in Silver Bow County and includes the monthly rent per space charged by each park, along with other information on

the parks. The average rent per space per month in Exhibit D is \$143.75. The DOR submits this local information to support the validity of the \$145 per space per month rent used in their income approach.

Finally, DOR Exhibit E provides information on three mobile home park sales in Silver Bow County. DOR believes that these are comparable sales to the subject. The Department uses these sales to show that mobile home parks in the local area are selling at a per unit rate that substantiates their per unit rate on the subject property.

#### **BOARD'S DISCUSSION**

In response to questions from the Board, the DOR provided two post-hearing submissions. The first includes information to demonstrate that the sales prices listed in Exhibit E for comparable local mobile home park sales were prices for only the real property and mobile home park improvements and did not include any mobile home units themselves. While this is true for the first two sales, the third of these sales was adjusted in the post-hearing submission to subtract the DOR's value for additional land and outbuilding/yard improvements from the sales price originally submitted at the hearing.

The second post-hearing submission gives detailed information on the income models DOR used in valuing the

subject property. These models come from Missoula, Cascade and Yellowstone Counties. This post-hearing submission gives average and median capitalization rates for each county. In the cover letter to their post-hearing submissions, DOR states, "The median cap rate, without effective tax rate of the 3 different models [sic] areas was rounded to 8% and used as the statewide cap rate before applying the effective tax rate."

The Board appreciates the DOR's attempt to value this property using the income approach. It is the most appropriate valuation method for the subject property. However, the income models DOR used come from three counties with economic circumstances substantially different from the economy in Silver Bow County. There is no indication that DOR attempted to parse out the sales in the other counties that would be the most comparable to the subject property nor that DOR made any effort to use actual park-specific income and expense information from the parks in the other counties to develop the capitalization rate applied to the subject property. (Second Post-Hearing Submission).

In addition, the capitalization rate applied to the subject property was simply a rate "rounded" from the median cap rates of the other three counties. It is



difficult to see how these three median rates - 6.17%, 7.83%, 8.43% (Second Post-Hearing Submission) - can be "rounded" to 8%. Why not, for example, use the median of the three median rates (7.83%)? The Board finds the DOR's application of an 8% cap rate "rounded" from the median rates in three other counties to be unsupported by the record and an arbitrary decision at best. Because DOR does not have adequate sales, income and expense data from Silver Bow County to use in developing a local, market-based capitalization rate for mobile home parks, it would be preferable, and more nearly market-based, for DOR to develop a local capitalization rate using the band-of-investment method.

The Board finds it difficult to understand why DOR did not simply use the income approach to value the entire subject property - mobile home park, mobile home units, house and land. All of these elements contribute to the income produced by the property. Valuing the entire package through the income approach simplifies the process of setting the value for the property and reflects the way in which an investor would determine the property's value before deciding whether or not to purchase it.

With the information available in the record, the Board made several efforts to use an income approach for

valuing the entire property, excluding the mobile home units since DOR has already valued those separately. Using a three-year average of actual income and expense data from the Taxpayer (Exhibit C) and varying the cap rate from 9% to 12%, the estimated value of the subject property varies from \$21,541 to \$16,156 per unit. It is clear from the complete record (discussed further below) that all of these values are higher than a true market value for the subject property.

Next, the Board used DOR Exhibit D to estimate a market rental rate for mobile home parks in Silver Bow County. Exhibit D lists information on eight mobile home parks that average \$143.75 rent per space per month. The Board prefers to drop one of the parks (Hamblin hghts) from the list because it is graded higher than the other parks listed. It is also the largest park (57 spaces) and the highest in rent per space (\$185). The remaining seven parks appear more comparable to the subject property. Their average monthly rent per space is \$137.86.

Rounding the average monthly rent per space to \$138 and using \$350 per month rent for the house, applying the average percentage vacancy rate and expenses from the Taxpayer's income and expense information (Exhibit C), and again using cap rates from 9% to 12%, the estimated value

of the subject property varies from \$12,140 to \$9,105 per unit. Again, it is clear from the complete record that even the lowest of these values is higher than a true market value for the subject property would be.

Finally, the Board went back to the first part of the post-hearing submission. This submission provides information on three sales of mobile home parks in Silver Bow County that the DOR considers comparable to the subject property. The first two sales occurred in 1994 and 1996 and are for the same mobile home park. Although this park appears to be more comparable to the subject property in size and quality, the Taxpayer pointed out at the hearing that the Silver Bow economy has changed a lot and for the worse since these sales took place in the 1990s. The Board agrees and, therefore, does not consider these sales as comparable to the subject property.

The third sale in this post-hearing submission occurred in January 2002 and is for a different mobile home park from the one represented in the first two sales. This park is significantly larger (68 units) than the subject property (15 units) and of a better quality (good versus low). The sale of this park also included 5.42 acres of vacant land and a 2400 sq.ft. metal building. (First Post-Hearing Submission). This submission provides the DOR

values for the vacant land and the metal building. However, the Board prefers to rely on the total sale price of \$580,000 because it is a true indicator of market value. Using this sale price, the price per space is \$8529.

Given the greater size and better quality, the additional land and the metal building, it is clear that this mobile home park has a greater value than the subject property. Thus, the Board finds that any value set for the subject should be lower than this comparable's market-set value per space of \$8529.

For comparison purposes, the Board calculated a per unit value for the total DOR value for the subject property (land, house, and commercial improvements). The total value given by DOR at the hearing was \$143,813. Including the house as a unit, there are sixteen units in the subject property which results in a per unit value for the subject of \$8988. This value is higher than the market-set value per space for the comparable mobile home park sale (\$8529). This indication that the current value may be too high is further buttressed by the Taxpayer's unsuccessful effort to sell the subject property, **including the mobile home units**, for \$150,000 (Taxpayer Exhibit 2), only \$6100 more than the DOR value for the total property, **not including the mobile home units**.

What then would be an appropriate value for the subject property? The only indication contained in the record comes from the First Post-Hearing Submission. DOR lists a price per space for the subject property at \$7,520. This value is a result of dividing the DOR's previous value for the commercial improvements (\$112,807) by 15 mobile home spaces. Although this value does not include the land underlying the mobile home park, as a true comparison would, it does suggest that DOR considers \$7,520 a fair market price per space for the subject property. Including the house as a unit and using \$7,520 per unit as the fair market value, the total value of the subject property (land, house, and commercial improvements) would be \$120,320.

This Board must evaluate the evidence that it has been presented and issue an opinion of value based on that evidence. The Taxpayer is the Appellant in this proceeding and therefore has the burden of proof. It is true, as a general rule, that the appraisal of the Department of Revenue is presumed to be correct and that 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.

(Western Airlines, Inc., v. Catherine Michunovich et al.,  
149 Mont. 347, 428 P.2d 3, (1967).

It is the opinion of the Board that the Taxpayer did not support the values the Taxpayer was requesting and did not meet the Taxpayer's burden of proof. However, the documented evidence submitted by the DOR also does not support the DOR's assessed values for the subject property.

The Montana Supreme Court has found that, "Tax appeal boards are particularly suited for settling disputes over the appropriate valuation of a given piece of property or a particular improvement . . ." Larson v. State of Montana and Department of Revenue 166 Mont. 449, 534 P.2d 854 (cited approvingly in Northwest Land v. State Tax Appeal Board 203 Mont. 313, 661 P.2d 44; 1983 and DOR v. Grouse Mountain Development 218 Mont. 353, 707 P.2d 1113; 1985).

Accordingly, based on a preponderance of the evidence, as previously discussed, the Board sets a total value for the subject property (land, house, and commercial improvements) of \$120,320.

#### **CONCLUSIONS OF LAW**

1. The State Tax Appeal Board has jurisdiction over this matter. §15-2-301, MCA.
2. §15-8-111 MCA. Assessment - market value standard - exceptions. (1) All taxable property must be assessed

at 100% of its market value except as otherwise provided.

3. Western Airlines, Inc., v. Catherine Michunovich et al., 149 Mont. 347, 428 P.2d 3, (1967).
4. Larson v. State of Montana and Department of Revenue 166 Mont. 449, 534 P.2d 854, (1975)
5. The decision of the Silver Bow County Tax Appeal Board is hereby modified and the total value of the subject property is set at \$120,320.

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ORDER

IT IS THEREFORE ORDERED by the State Tax Appeal Board of the State of Montana that the subject property shall be entered on the tax rolls of Silver Bow County by the local Department of Revenue office at the total value of \$120,320 for the land, the house, and the commercial improvements. The decision of the Silver Bow County Tax Appeal Board is modified.

Dated this 7<sup>th</sup> day of April 2005.

BY ORDER OF THE  
STATE TAX APPEAL BOARD

( S E A L )

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GREGORY A. THORNQUIST, Chairman

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JOE ROBERTS, Member

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SUE BARTLETT, 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 7th day of April, 2005, 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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