

**BEFORE THE STATE TAX APPEAL BOARD  
OF THE STATE OF MONTANA**

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JOAN E. THOMAS,	)	DOCKET NO.: PT-2011-3
	)	
Appellant,	)	
	)	
-vs-	)	FACTUAL BACKGROUND,
	)	CONCLUSIONS OF LAW,
THE DEPARTMENT OF REVENUE	)	ORDER and OPPORTUNITY
OF THE STATE OF MONTANA,	)	FOR JUDICIAL REVIEW
	)	
Respondent.	)	

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**Statement of Case**

Joan E. Thomas (Taxpayer) appealed a decision of the Fergus County Tax Appeal Board (CTAB) relating to the DOR’s valuation of the property located at 315 3<sup>rd</sup> Avenue North, Lewistown, Montana.

The Taxpayer argues the DOR overvalued the property for tax purposes, and seeks a reduction in value assigned by the DOR. A hearing was held by the Fergus County Tax Appeal Board at which Joan Thomas represented herself. Jason Boggess, DOR area manager, presented testimony and evidence in opposition to the appeal. The State Tax Appeal Board (Board) set the matter to be heard on the record without objection by the parties. The record includes the materials submitted to the county tax appeal board, the transcript of the hearing, and additional material submitted to this Board pursuant to the scheduling order in this matter.

The Board having fully considered the testimony, exhibits and all matters presented to this Board finds and concludes the following:

### **Issue**

The issue before this Board is did the Department of Revenue determine an appropriate market value for the subject property for tax year 2011?

### **Summary**

Joan E. Thomas is the Taxpayer in this proceeding and, therefore, has the burden of proof. Based on a preponderance of the evidence, the Board modifies the decision of the Fergus County Tax Appeal Board.

### **Evidence Presented**

1. Due, proper and sufficient notice was given of this matter.
2. The subject property is commercial property in Lewistown situated on a 7,920 square foot lot described as:

Lot 6 and the southwest 38 feet of lot 5, Block 5, Section 15, Township 15N, Range 18E, of the Janeaux addition number 2, in Fergus County, State of Montana. (DOR Exh. B, Property Record Card.)
3. The DOR used the cost approach to set the original value for tax year 2009, valuing the subject property at \$108,767, with a land value of \$17,546 and an improvement value of \$91,221. (Appeal Form, DOR Exh. B.)
4. The DOR used a Computer Aided Land Pricing (CALP) model to value the land; however, the land value is not in question in this case. (Boggess Testimony, CTAB Exh. 1, Appeal Form.)
5. The DOR completed a mid-cycle quality control check on January 26, 2011. This check resulted in an increase in value of the improvements to \$116,800, because of a prior mistake in the overall square footage. A new

valuation of \$134,346 was issued to the Taxpayer for the subject property. (Boggess Testimony, DOR Exh. B.)

6. The cost approach requires the DOR to calculate a value of the improvements based on the cost of new construction, and depreciate the value of the building to reflect its age and condition. (Boggess Testimony, DOR Exh. B & DOR STAB hearing submittal.) This building value is then added to the land value set by the CALP.
7. The Taxpayer filed an appeal with the Fergus County Tax Appeal Board (CTAB) on June 16, 2011, stating:

“I think it is time to look at what is happening to old buildings in this town that have struggled for years to provide decent affordable housing to Lewistown. Rents do not provide for needed upkeep and serious degradation(*sic*) is possible.” (Appeal Form.)
8. The Taxpayer is asking for a value of \$108,426 consisting of \$17,546 for the land and \$90,880 for the improvements. (Thomas Testimony, Appeal Form.)
9. The Taxpayer submitted a list of all her rental properties in Lewistown and their assessed values. (CTAB Exh. 4.)
10. The Taxpayer also submitted the Supplemental Income and Loss (Schedule E) from her Internal Revenue Service (IRS) Tax form 1040 for tax years 2008, 2009 and 2010. These forms showed the income and expenses for all the Taxpayer’s rental properties. (CTAB Exh. 3.)
11. The Fergus CTAB heard the appeal on September 13, 2011, and denied the appeal for lack of documentation to support Taxpayer value. (DOR Exh. A, Appeal Form.)
12. Typically, the preferred valuation method for commercial property is the income approach to value commercial property. DOR Appraiser Jason Boggess testified if the standard income approach model had been used to

value the subject property, the total value would have been \$151,900, (\$17,554 higher than the cost approach.) In this instance, the appraiser chose to use the cost approach because in his appraisal judgment, the lack of reliable income data did not produce an accurate value. Appraiser Boggess also testified if the DOR had used the Taxpayer's income, the value would have been higher than the standard income model. (Boggess Testimony, DOR Exh. B.)

13. The Taxpayer appealed to this Board on October 12, 2011, stating:

“I do not believe I was subject to reassessment during a mid term(sic). I was assessed in 2009 and did not build change or add on should not be reassessed until 2015.” (Appeal Form.)

14. The DOR submitted to this Board a reappraisal cost calculation worksheet, which breaks down the cost approach showing how they arrived at the assessed improvement value. (DOR STAB hearing submittal.)

### **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% of its market value except as otherwise provided. (§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. (§15-8-111(2)(a), MCA.)
4. For the years from January 1, 2009, through December 31, 2014, all class-four property must be appraised at its market value as of July 1, 2008. (ARM 42.18.124(b).)
5. Whenever the department discovers property subject to assessment that has escaped assessment, been erroneously assessed, or been omitted from

taxation, the department may issue a revised assessment to the person who owned the property at the time it escaped assessment. (§15-8-601(1)(b), MCA.)

6. The appraised value supported by the most defensible valuation information serves as the value for ad valorem tax purposes. (ARM 42.18.110(12).)
7. 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. (ARM 42.20.107(2).)
8. 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.)

### **Board Discussion and Conclusions**

This Board must determine, based on a preponderance of the evidence, whether the DOR set an appropriate valuation for the subject property for tax year 2011. The Board has authority to hear evidence, find the facts, apply the law, and arrive at a proper value for the subject property.

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).

Before we review the evidence of value, we will address the Taxpayer's claim that the property was not properly reassessed in mid-cycle. By rule and statute, all taxable class four property in Montana must be appraised at its market value on the same day, as of July 1, 2008 for the current appraisal cycle. *See* POL 4. That value is then phased in for subsequent tax years. However, whenever the DOR discovers that any taxable property of any person has in any year escaped assessment, been erroneously assessed, or been omitted from taxation, the department may re-assess the property for the current year and the remainder of the tax cycle. *See* POL 5. Thus, it is proper for the DOR to adjust the value for tax year 2011 in this instance.

As a separate argument, the Taxpayer claims the DOR value is too high and unrealistic considering the rental rates charged for old buildings. The Taxpayer, however, failed to provide actual rental income and expenses for the building at issue in this matter. Instead, we have evidence of her total income and expenses for multiple properties. From that evidence, we cannot determine whether her argument has merit.

The mass-appraisal techniques developed by the DOR are designed to find the value on the open market as of the appraisal date. As part of the standard mass appraisal system, the DOR used a cost approach to determine a value of \$116,800 for the subject improvements because the appraiser determined that insufficient data was available for the income or market approach, or that the calculations were not representative of market value. *See* EP12. Instead, the DOR chose to calculate a value of the improvements based on new construction, and depreciate the value of the building to reflect its age and condition. While this is not a preferred method of valuation, it is acceptable in certain instances and in this case resulted in a lower value.

We find the DOR demonstrated the calculations were accurate and appropriate for the subject improvements. *See* EPs 5 & 14. The Taxpayer provided testimony in opposition to the value, but provided no evidence that the DOR improperly calculated the improvement value. The Taxpayer only supplied copies of her IRS 2008, 2009 and 2010 schedule E forms to show total income and expenses from multiple properties used in calculating income taxes. *See* EP 10. This evidence has little relevance in calculating market value for a particular property since we cannot decipher where the income is derived or how the expenses are divided among the Taxpayer's numerous rental properties.

Thus, it is the opinion of this Board that the value of \$134,346 set by the DOR is correct. Therefore, the Board affirms the CTAB decision.

**Order**

IT IS THEREFORE ORDERED by the State Tax Appeal Board of the State of Montana that the decision of the Fergus County Tax Appeal Board be affirmed and the subject property be entered on the tax rolls of Fergus County at a 2011 value of \$134,346.

Dated this 23rd day of January, 2012.

BY ORDER OF THE  
STATE TAX APPEAL BOARD

/s/ \_\_\_\_\_  
KAREN E. POWELL, Chairwoman

( S E A L )

/s/ \_\_\_\_\_  
DOUGLAS A. KAERCHER, Member

/s/ \_\_\_\_\_  
SAMANTHA SANCHEZ, 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 23rd day of January, 2012, 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:

Joan E. Thomas	<input type="checkbox"/> U.S. Mail, Postage Prepaid
122 E. Lake Ave.	<input type="checkbox"/> Hand Delivered
Lewistown, MT 59457-1923	<input type="checkbox"/> E-mail

Jason Boggess	<input type="checkbox"/> U.S. Mail, Postage Prepaid
Fergus County Appraisal Office	<input type="checkbox"/> Hand Delivered
712 West Main	<input type="checkbox"/> E-mail
Lewistown, Montana 59457	<input type="checkbox"/> Interoffice

Michele R. Crepeau	<input type="checkbox"/> U.S. Mail, Postage Prepaid
Office of Legal Affairs	<input type="checkbox"/> Hand Delivered
Department of Revenue	<input type="checkbox"/> E-mail
Mitchell Building	<input type="checkbox"/> Interoffice
Helena, Montana 59620	

Fergus County Tax Appeal Board	<input type="checkbox"/> U.S. Mail, Postage Prepaid
103 Hill Ave.	<input type="checkbox"/> Hand Delivered
Lewistown, Montana 59457	<input type="checkbox"/> E-mail

/s/ \_\_\_\_\_  
DONNA EUBANK  
Paralegal