

BEFORE THE STATE TAX APPEAL BOARD
OF THE STATE OF MONTANA

| | | |
|---------------------------|---|-----------------------------------|
| ROBERT G. GENTRY AND |) | |
| LOTTIE A. GENTRY, |) | |
| |) | DOCKET NO.: PT-2001-4 |
| Appellants, |) | |
| |) | <u>NUNC PRO TUNC</u> |
| -vs- |) | FACTUAL BACKGROUND, |
| |) | CONCLUSIONS OF LAW, |
| THE DEPARTMENT OF REVENUE |) | ORDER and OPPORTUNITY |
| OF THE STATE OF MONTANA, |) | <u>FOR JUDICIAL REVIEW</u> |
| |) | |
| Respondent. |) | |

The above-entitled appeal was heard on May 4, 2002, in the City of Shelby, Montana, in accordance with an order of the State Tax Appeal Board of the State of Montana (the Board). The notice of the hearing was duly given as required by law.

Mr. Robert G. Gentry and Mrs. Lottie A. Gentry (the Taxpayer) presented testimony in support of the appeal. The Department of Revenue (DOR), represented by Charles E. Pankratz, Region 2 Lead, Wanda M. Bandow, Appraiser, and Donald L. South, Appraiser, presented testimony in opposition to the appeal.

The duty of the Board is to determine the market value of the Taxpayer's property based on the preponderance of the evidence. The State of Montana defines "market value" as **MCA**

§15-8-111. Assessment - market value standard - exceptions.

(1) All taxable property must be assessed at 100% of its market value except as otherwise provided. (2)(a) Market value is a 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 a reasonable knowledge of relevant facts.

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)).

Based on the evidence and testimony, the Board finds that the decision of the Toole County Tax Appeal Board shall be affirmed.

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 property which is the subject of this appeal is described as follows:

9.15 acres locate in the SW 1/4 of the SW 1/4 of the SW 1/4 in Section 15, Township 32 and Range 2 West and improvements located thereon.
Geo Code - 4424-15-3-01-01-0000.
Assessor Code - 713275.

3. For the 2000 tax year the DOR appraised the subject land at \$137,250 and the improvements at \$116,300 for a total property value of \$253,550.

4. On May 30, 2001, the Taxpayer appealed the DOR's value to the Toole County Tax Appeal Board (County Board) citing the following reasons for the appeal:

Can not see where the amount of tax increase over past year has been justifiable. 1997 value only 179,005 - 1999 value 135,135 (gone down in value). Now in 2000 valued 253,550.

5. In its May 30, 2001 decision, the County Board denied the Taxpayer's appeal on the value of the improvements, and modified the value of the land to \$117,250, stating:

Land valuation is based upon comparable sales when such properties have full utility services. From an income approach, a value of \$15,000 per acre is not justifiable. Value on 4 unused acres is adjusted from \$15,000/acre to \$10,000/acre.

6. The Taxpayer then appealed the County Board's decision to this Board on January 3, 2002 stating the proper value for seasonal RV parks should be set pursuant to a formula

outlined in an attachment to the appeal and requesting values of \$101,000 for the land \$110,000 for the improvements.

STATEMENT OF THE ISSUE

The issue before the Board is the market value of the subject property as of January 1, 2001.

TAXPAYER'S CONTENTIONS

The Taxpayer originally requested a value of \$101,000 or \$11,038 per acre, but then modified this value request to \$60,000 or \$6,557 per acre. The method in which the Taxpayer has arrived at this value is as follows: (Exhibit #1, page 3)

Taxed per acre per month in valuation per commercial rate for the months in operation \$15,000 divided by 12 = \$1250.00 X 5 months of operation = \$6250.00 X 5 acres = \$31,250.00

Remaining of the year, not in operation at this valuation per acre:
Uses of the 5 acres which the park is on valued at \$10,000.00 per acre divided by 12 months = \$833.3333 X 7 months for the remainder of the off season of the year = \$5833.33 X 5 acres = \$29,166.00 + \$31,250.00 = \$60,416.66 a true valuation of land uses of the park.

The remaining unused portion of 4 acres in this plot in no more than pasture land and should not be taxed more than pastureland.

According to the Ag. Statistics Service of Montana pastureland is \$225.00 per acre which equals \$900.00.

The taxpayer suggested the RV Park be valued as only being operated on a seasonal basis as advertised. The DOR has valued the property as though it were operational year around.

The Taxpayer testified that structural improvements were made to the property in 1999 in the form of a residence being constructed above the retail structure. The taxpayer

estimated construction in the amount of \$60,000.

DOR'S CONTENTIONS

DOR presented assessment definitions set forth in Sections 15-1-101 and 15-8-111 MCA, stating that all taxable property must be assessed at 100% of its market value except as otherwise provided.

DOR's Exhibit O is a listing of sales which the DOR relied upon when setting the land value at \$15,000 per acre. The DOR established a land value for the 9.15 acres at \$137,250.

The DOR testified that in valuing the improvements, it relied upon the cost approach to value. DOR exhibits J and K illustrate the DOR value for the improvements. Summarized, these exhibits illustrate the following:

Land Data

| <u>Acres</u> | <u>Land Value</u> |
|--------------|-------------------|
| 9.15 Acres | \$137,250 |

Building Data

Year Built - 1958
Year Remodeled - 1999
Effective Year - 1980
Grade (quality) - A(average)

Retail Store:

1404 square feet
Physical Condition - Average
Functional Utility - Average
%Good - 65% (depreciation - 35%)
Replacement Cost New Less Depreciation
- \$41,390

Apartment:

1958 square feet
Physical Condition - Average
Functional Utility - Average
%Good - 65% (depreciation - 35%)
Replacement Cost New Less Depreciation
-\$46,930

Other Building and Yard Improvements

MSI (RV Park Improvements)
Replacement Cost New Less Depreciation
- \$27,630

TR1 (Bathroom Facility)

Year built - 1992

Physical Condition - Average
Functional Utility - Average
Replacement Cost New Less Depreciation
= \$46,930

RV Park Improvements (Exhibit K)

| | <u>13 spaces</u> | <u>47 spaces</u> |
|---|------------------|--|
| Total Costs | \$1,585 | \$815 |
| CCM (current cost multiplier) | 1.10 | 1.10 |
| LM (local multiplier) | 0.98 | 0.98 |
| Gross Area | 0.95 | 1.03 |
| # of Spaces | <u>1.10</u> | <u>1.00</u> |
| Base Cost | 1786 | 905 |
| X% | <u>0.78</u> | <u>0.78</u> |
| Replacement Cost New Less Depreciation Per Space | 1393 | 706 |
| # of Spaces | 13 | 47 |
| Market Value | \$18,105 | \$33,175 |
| Combined Value 8 of 12 Months | | \$51,280 0.66 \$33,845 |

In support of its contentions, DOR introduced a number of exhibits pertaining to the 1997 commercial reappraisal plan.

BOARD'S DISCUSSION

The Taxpayers' requested value of \$60,000 for the land appears to be established by some method of "value-in-use". Value-in-use is defined as the value a specific property has for a specific use.¹ This method is unsupported by any market data or any supporting evidence. The Taxpayer also testified that, when the property was purchased, approximately 50% of the purchase price reflected, "blue sky." It appears that the

¹ Appraisal of Real Estate, Eleventh Edition

Taxpayer is indicating he purchased the property based on a "going-concern value".² Going-concern value is defined as the value of a proven property operation. The Taxpayer has provided no supporting evidence or testimony to establish going-concern value.

In 1997, the first year of the current appraisal cycle, the DOR established a land value for the subject property at \$27,450, or \$3,000 per acre. (Ex. #1) In 1998 the DOR increased the land value to \$137,350, or \$15,000 per acre. (Ex. #1) The DOR testified that the reason this increase occurred was that a previous DOR appraiser erroneously entered a value of \$3,000 per acre, when in fact it should have reflected a value of \$15,000 per acre. The DOR emphasized that it has the ability to correct an assessment pursuant to **MCA 15-8-601. Assessment Revision - conference for review.**

...whenever the department 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 assess the property provided that the property is under the ownership or control of the same person who owned or controlled it at the time it escaped assessment, was erroneously assessed, or omitted from taxation...

The Board does not dispute the DOR's authority to correct an assessment, but it must also be prepared to present the supporting market data that brought it to the conclusion that

² Appraisal of Real Estate, Eleventh Edition

an error was made. 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)).

The subject property contains 9.15 acres of land. The DOR presented exhibit O, which listed thirty-one sales transactions. Twenty-seven of the sales occurred on sites that amounted to .14 to .34 acres. These are clearly not comparable to the subject property. The four remaining sales and exhibits P, Q, R and S, which the DOR testified it relied upon in determining the \$15,000 per acre, reflect the following:

| <u>Sale #/Exhibit</u> | <u>Sale Date</u> | <u>Sale Price</u> | <u>Size (acres)</u> | <u>\$ Per Acre</u> |
|-----------------------|------------------|-------------------|---------------------|--------------------|
| #1, Ex. O | 1992 | \$15,000 | 1.01 | \$14,851 |
| #2, Ex. O | 1996 | \$15,000 | 1.36 | \$11,029 |
| #5, Ex. O | 1993 | \$34,000 | .78 | \$43,590 |
| #6, Ex O | 1993 | \$34,000 | 1.24 | \$27,419 |
| Ex. P | Unknown | \$16,200 | 1.08 | \$15,000 |
| Ex. Q | Unknown | \$20,400 | 1.36 | \$15,000 |
| Ex. R | Unknown | \$7,575 | .505 | \$15,000 |
| Ex. S | Unknown | \$15,150 | 1.01 | \$15,000 |

The DOR testified that Sale #1 and Exhibit S and Sale #2 and Exhibit Q are the same transactions. If this were the situation, one would expect that the calculations would match.

It is difficult to give the DOR exhibits proper credence when the testimony disputes the exhibit. The Board will note that the calculations made on exhibits P, Q, R and S were hand made and attached with a sticky note. Exhibit O appears to represent one that is more likely used in the course of business. It is interesting to note that Exhibit O states on the front page "THIS RUN WILL BE FOR YEAR 2003". This makes the Board wonder if this exhibit was in existence when the 1997 appraisal cycle began.

Within the appraisal process, the DOR appraises the property as though vacant. ARM 42-18-112, 1997 commercial reappraisal plan, states in pertinent part: (1) The reappraisal of commercial property consists of:

(c) collection, verification and analysis of sales and income information;

(d) data entry of sales and income information;

(e) development and review of CALP models;

(7) Commercial lots and tracts are valued through the use of CALP models. Homogeneous areas within each county geographically defined as neighborhoods. The CALP models will reflect January 1, 1996, market values.

(12) This rule applies to tax years from January 1, 1997, through December 31, 2002.

It is the opinion of the Board that Exhibit O is not a CALP³ model as we have been presented in past appeals, i.e., *Meadowlark Country Club v. DOR, DOCKET NO.: PT-1997-98*.

Two separate transactions for the subject property

3 CALP (Computer Assisted Land Pricing) Model

occurred in a span of approximately three years. The first sale took place in 1995, when the property sold for a reported \$200,000. (Ex. M) The second sale, the current owner, purchased the property in 1998 for a reported \$220,000. The second transaction included personal property in the amount of \$14,315 as illustrated on the Realty Transfer Certificate (Ex. M) and \$20,000 as illustrated on the Commercial Sales Verification form submitted by the seller. After deducting the personal property from the sale price, the suggested real estate value is \$200,000 to \$205,685. The sale that occurred in 1995 was for \$200,000 and three years later transferred ownership of nearly the exact amount, suggesting little to no appreciation in value. Had the taxpayer not made improvements to the property in 1999, the indication is that the overall value would be approximately \$200,000. The taxpayer testified that the cost for the residential portion of the improvement added in 1999 was approximately \$60,000. There is nothing in the record to suggest the taxpayer could not recover his additional investment made in 1999. The additional investment would suggest a value of approximately \$260,000 for the property. The market value for the property as determined by the County Board was set at \$233,550.

Finally, DOR introduced what it referred to as a number

of comparable property sales. These properties are distinguishable from the Taxpayer's property in a number of ways. None of the properties were an RV park and all were closer to the city while the subject was located at the extreme of the city limits. The properties offered by the DOR contained all of the city's amenities while the subject was limited to water and electricity. Importantly, none of the suggested comparables were similar in amount of land.

Because the DOR did not appeal the County Board's property values such values become the maximum appraised values.

It is the Board's opinion that neither the Taxpayer nor the DOR presented sufficient testimony and evidence to overcome the decision of the County Board with respect to the subject property as of January 1, 2001.

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. **§15-2-301 MCA, Appeal of county tax appeal board decisions.** (4) In connection with any appeal under this

section, the state board is not bound by common law and statutory rules of evidence or rules of discovery and may affirm, reverse, or modify any decision.

4. 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)).
5. **ARM 2.51.403 (2)**, With respect to taxable real property and improvements thereon, the decision of the state tax appeal board shall be final and binding unless reversed or modified by the district court upon judicial review. If the decision of the state tax appeal board is not reviewed by a district court, it is final and binding for subsequent tax years unless there is a change in the property itself or circumstances surrounding the property which affects its value.
6. The Board finds that the evidence presented supports its conclusion that the decision of the Toole County Tax Appeal Board be affirmed.

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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 Toole County by the local Department of Revenue office at the values of \$117,250 for the land and \$116,300 for the improvements for tax year 2001. The appeal of the taxpayer is therefore denied and the decision of the Toole County Tax Appeal Board is affirmed.

DATED this 22nd day of May, 2002.

BY ORDER OF THE
STATE TAX APPEAL BOARD

(S E A L)

GREGORY A. THORNQUIST, Chairman

JEREANN NELSON, Member

MICHAEL J. MULRONEY, 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 22nd day of May, 2002, the foregoing **Nunc Pro Tunc** 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:

Robert G. & Lottie A. Gentry
P.O. Box 369
Shelby, MT 59474

Donald South
Toole County Appraiser
226 1st St. South
Shelby, MT 59474

Office of Legal Affairs
Department of Revenue
Mitchell Building
Helena, MT 59620

Hales Scalese
Chairman
Toole County Tax Appeal Board
RR Box 22
Galata, MT 59444

DONNA EUBANK
Paralegal