

BEFORE THE STATE TAX APPEAL BOARD
OF THE STATE OF MONTANA

JEM, L.L.C.,)	DOCKET NO.: PT-2009-112E,
)	J & M
Appellant,)	
)	FACTUAL BACKGROUND,
-vs-)	CONCLUSIONS OF LAW,
)	ORDER and OPPORTUNITY
THE DEPARTMENT OF REVENUE)	FOR JUDICIAL REVIEW
OF THE STATE OF MONTANA,)	
)	
Respondent.)	

Statement of Case

JEM, L.L.C., (Taxpayer) appealed decisions of the Yellowstone County Tax Appeal Board (CTAB) relating to the Department of Revenue’s (DOR) valuation of three commercial properties in Billings. The Taxpayer argued the DOR overvalued the properties for tax purposes and seeks a reduction in value assigned by the DOR. The matter was heard before the State Tax Appeal Board on the record, without objection from the parties.

The Board having fully considered the testimony and exhibits from the record made before the Yellowstone County Tax Appeal Board, and all matters presented to this Board, finds and concludes that:

Issue

The issue before this Board is whether the Department of Revenue valued the subject properties appropriately for tax purposes for tax year 2009.

Summary

Based on a preponderance of the evidence, the Board upholds the decisions of the Yellowstone 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 verbal and documentary evidence.
2. JEM, L.L.C., is the Taxpayer in this proceeding and, therefore, has the burden of proof.
3. The Taxpayer filed a Request for Informal Review (AB-26) for each of the disputed properties on September 8, 2009, asking for an informal review meeting to provide additional information. (AB-26 Forms.)
4. After review of the subject properties, DOR appraiser Nelson made no valuation reduction in one property, and minor adjustments in two other properties. (Nelson Testimony, AB-26 Forms.)
5. The Taxpayer filed appeals with the Yellowstone County Tax Appeal Board (CTAB) on June 1, 2010. (Appeal Forms.)
6. The Yellowstone CTAB heard the appeals on July 29, 2010, and the CTAB affirmed the Department's values on all of the properties.
7. The Taxpayer appealed the properties to this Board on September 8 and 9, 2010. (Appeal Forms.)

8. The Taxpayer was represented at the Yellowstone CTAB hearing by Jennifer Ray, Assistant Manager of JEM, L.L.C. (CTAB Transcript, Appeal Form.)
9. The DOR was represented at the CTAB hearing by Robin Rude, Area Manager and Vicki Nelson, Lead Appraiser. (CTAB Transcript.)
10. For tax year 2009, the DOR used the income approach to value the subject properties. An income approach to value is derived by multiplying net operating income by a capitalization rate to determine a valuation. (Nelson Testimony.)
11. The net operating income is derived by surveying property owners in the Billings area to determine average market rents, vacancy rates, and expenses. (Nelson Testimony.)
12. The DOR used a capitalization rate of 8.8 percent derived from actual sales of commercial property and the survey of property owners to determine actual net operating income. (Nelson Testimony, Exhibit A, p.1.)
13. The subject properties are commercial urban lots with a multi-unit warehouse complex on each property, with the following legal descriptions:

PT-2009-112E: 2010 Main Street, Billings, Montana. A 20,760 square foot flex warehouse unit on a 59,545 square foot lot, Lots 11, 12A-1, 13A and 14A, Block 2, of the Chamberlain Subdivision Amended, Section 15, Township 01 North, Range 26 East, Yellowstone County, State of Montana. (Appeal Form, CTAB Exh. A, pp.1-4.)

PT-2009-112J: 4005 1st Ave. South, Billings, Montana. A 23,000 square foot flex warehouse unit on a 45,900 square foot lot, Lot 5 and the East ½ of Lot 6, Suburban Subdivision South Amended, Section 04, Township 01 South, Range 26 East, Yellowstone County, State of Montana. (Appeal Form, CTAB Exh. A, pp.1-4.)

PT-2009-112M: 2021 2nd Ave. North, Billings, Montana. A multi-unit warehouse complex on a 28,000 square foot lot, Lots 17 through 24, Block 65, Billings Original Town, Section 33, Township 01 South,

Range 26 East, Yellowstone County, State of Montana. (Appeal Form, CTAB Exh. A, pp.1-5.)

2010 Main Street Property

14. The DOR initially valued this property by the income approach and set a value at \$1,109,200. (Ray Testimony.)
15. After the request for informal review, the DOR reduced the value of this property to \$939,100. (CTAB Exh. A.)
16. The Taxpayer requested the value set on the property in 2002. (Ray Testimony.)
17. Other than stating the property is overvalued and under-rented, the Taxpayer presented no evidence to demonstrate the DOR overvalued the property.

4005 1st Ave South

18. The DOR initially valued this property at \$798,900. (Ray Testimony.)
19. After the informal review, the DOR adjusted the valuation of \$693,960, reflecting a time-trended purchase price. (Nelson Testimony, AB-26 forms.)
20. The Taxpayer requested a valuation of \$575,770, which was the value set in 2002. (Appeal form, Ray Testimony)
21. The Taxpayer purchased the 4005 1st Ave South property in 2007 for \$667,819, with very advantageous terms and valuation. (Ray testimony).
22. The DOR, in reviewing the property, overrode the income approach and time-trended the sale price to the July 1, 2008 appraisal date.
23. The income approach to value would have set the market value at approximately 13% higher than that set by the purchase price.

24. Other than arguing the property is overvalued and under-rented, the Taxpayer presented no evidence to demonstrate the DOR overvalued the property.

2021 2nd Ave North

25. The property record card indicates a cost approach valuation of \$334,070 and an income approach to valuation of \$259,200.
26. At the CTAB hearing, the Taxpayer requested a value of \$102,456.59.
27. The Taxpayer purchased 2021 2nd Ave North with a second building, and argues that \$102,456.59 reflects the proper allocation of the partial purchase price of the property. The property was purchased with a non-standard agreement and terms.
28. As part of the filings with this Board, appraiser Nelson submitted an explanation of the assessed value placed on the property located at 2021 2nd Ave. North. After performing an external review of the subject property, she adjusted the income model to reflect the rent and vacancy rate and overrode the land value to reflect the Taxpayer's purchase price. These adjustments resulted in the assessed value of \$286,920. (DOR March 31, 2011 submittal.)
29. In her professional experience, Appraiser Nelson believed the purchase price allocated by the Taxpayer did not reflect the market value for the property. The allocated value is not reflective of what similar property was selling for and is far below what the Taxpayers paid for other parcels in the transaction. (DOR March 31, 2011 submittal, Affidavit of Vicki Nelson.)
30. The Yellowstone CTAB set the value of this property at \$259,200. (CTAB decision.)

31. Other than arguing the property is overvalued and under-rented, the Taxpayer presented no evidence to demonstrate the DOR overvalued the property.

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. When determining the market value of commercial properties, Department appraisers will consider, if the necessary information is available, an income approach valuation. 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 or, if appropriate, the market approach to value. The final valuation is that which most accurately estimates market value. (42.20.107, ARM.)
5. The income approach is based on the theory that the market value of income-producing property is related to the amount, duration, and certainty of its income-producing capacity. (42.20.108(1), ARM.)

6. The Department periodically requests gross rental income and expense information from commercial property owners. Standard forms, developed by the Department, are used to collect the information statewide when income-producing properties are reported sold. Additional methods of obtaining income and expenses information may consist of personal or telephone contacts with owners, tenants, renters or lessees, knowledgeable lending institution officials, real estate brokers, fee appraisers, or any other sources the appraiser deems appropriate including summarized data from recognized firms which collect income and expense information, and appeal or court actions. (42.20.108(3), ARM.)
7. When using the income approach, the Department will develop overall capitalization rates which may vary according to use type, location, and age of improvements. (42.20.109(1), ARM.)
8. A straight-line recapture rate and effective tax rate is added to the discount rate to determine the yield capitalization rate. (42.20.109(3), ARM.)
9. The appraised value supported by the most defensible valuation information serves as the value for ad valorem tax purposes. (42.18.110(12), ARM.)
10. 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 of Law

The Board must determine, based on a preponderance of the evidence, whether the DOR set an appropriate valuation for the subject properties for tax year 2009.

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).

2021 2nd Ave North

For the property located at 2021 2nd Ave. North, the Taxpayer contends an allocated purchase price of \$102,456.59 should be used as the value. The DOR argues that the subject property was purchased with other property and the Taxpayer's allocated purchase price is not reflective of market value. Because of the economy of scale in purchasing multiple properties, the allocated purchase price is generally not reflective of what other similar individual property sell for on the open market. The DOR appraiser noted that the allocated sales price was also significantly below other sales prices in the area.

The Yellowstone CTAB, in its decision, determined that the valuation set by the income approach most closely set the market value for the subject property. The County Tax Appeal Boards are uniquely suited to evaluate local real estate markets and specific neighborhoods relative to their county and are able to apply this expertise to individual properties. No evidence has been presented that would indicate any error in their valuation.

2010 Main Street and 4005 1st Ave North

Taxpayer requested the values be set at the 2002 reappraisal value because of the current economy. Taxpayer failed to make a credible argument for their requested value for the properties located at 2010 Main Street and 4005 1st Ave. North. The Taxpayers further failed to provide the Board with any evidence to support the argument for lower valuation. Without any

evidence presented, we will not consider the Taxpayer's arguments persuasive in overturning the valuations of the DOR, which are supported by sufficient evidence. Thus, we uphold the DOR values.

Summary

Thus, this Board finds the assessed values determined by the Yellowstone County Tax Appeal Board are correct.

Order

IT IS THEREFORE ORDERED by the State Tax Appeal Board of the State of Montana that the subject properties value shall be entered on the tax rolls of Yellowstone County at a 2009 tax year value as determined by the Yellowstone County Tax Appeal Board.

Dated this 13th day of April, 2011.

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 t his Order.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 13th day of April, 2011, 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:

Jennifer Ray, agent
2646 Grand Avenue Suite #1
Billings, Montana 59102

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

Robin Rude
Vicki Nelson
Yellowstone County Appraisal Office
175 North 27th Street Suite 1400
Billings, MT, 59102

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

Michelle R. Crepeau
Office of Legal Affairs
Department of Revenue
Mitchell Building
Helena, Montana 59620

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

Via U.S. Mail:

Edward Cross, Chairman
Yellowstone County Tax Appeal
Board
2440 Eastridge Drive
Billings, Montana 59102

