

BEFORE THE STATE TAX APPEAL BOARD
OF THE STATE OF MONTANA

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

Statement of Case

JJR, L.L.C., (Taxpayer) appealed a decision of the Yellowstone County Tax Appeal Board (CTAB) relating to the Department of Revenue’s (DOR) valuation of properties located at 1911 8th Avenue North and 1107 Alderson Avenue, Billings, Montana. 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

JJR, L.L.C., is the Taxpayer in this proceeding and, therefore, has the burden of proof. Based on a preponderance of the evidence, the Board upholds the decision 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 evidence, verbal and documentary.
2. The subject properties are two commercial urban lots with one multi-unit apartment complex on each property, with the following legal descriptions:
 - 1911 8th Ave. N.:** A 6 unit apartment complex on Lot 28 of the Burnstead Subdivision, Section 33, Township 01 North, Range 26 East, Yellowstone County, State of Montana.
 - 1107 Alderson Ave.:** A 21 unit apartment complex on Lots 1 through 3, Block 4, Sunset Subdivision, Section 05, Township 01 South, Range 26 East, Yellowstone County, State of Montana. (Appeal Form & Attachment.)
3. The Taxpayer was represented at the Yellowstone CTAB hearing by Jennifer Ray, Assistant Manager of JJR, L.L.C. (CTAB Transcript, Appeal Form.)
4. The DOR was represented at the CTAB hearing by Robin Rude, Area Manager and Vicki Nelson, Lead Appraiser. (CTAB Transcript.)
5. For tax year 2009, the DOR used the income approach to value the subject properties. This resulted in a value for the 1911 8th Ave. North property of \$305,400 and \$1,038,700 for the 1107 Alderson Ave. property. (CTAB Exh. A.)

6. The information used in calculating the income approach is standard data used to value residential apartment complexes in Billings and other urban areas. (Nelson Testimony.)
7. The income approach to value is generally a calculation of net income multiplied by a capitalization rate to determine a value. (Nelson Testimony.)
8. The net operating income is derived by surveying property owners in the Billings area to determine market rents, vacancy rates, and expenses. (Nelson Testimony.)
9. The DOR uses a capitalization rate of 8.01 percent derived from actual sales of apartment complexes and the survey of property owners to determine actual net operating income for those buildings. (Nelson Testimony.)
10. The Taxpayer filed a Request for Informal Review (AB-26) for each of the disputed properties on September 8 & 10, 2009, asking for an informal review meeting to provide additional information. (AB-26 Forms.)
11. After review of the subject properties, the DOR made no reductions in value to either property. (Nelson Testimony, AB-26 Forms.)
12. The Taxpayer filed appeals with the Yellowstone County Tax Appeal Board (CTAB) on June 4, 2010, stating “high turnover due to economy and market saturation” as the reason for appealing. (Appeal Form.)
13. The Yellowstone CTAB heard the appeals on July 29, 2010, and upheld the DOR value for the subject properties. (Appeal Form.)
14. During the CTAB hearing, the Taxpayer requested the Board set the value of the subject properties at the 2002 reappraisal value for the 1911 8th Ave. North property of \$173,600 and \$766,000 for the 1107 Alderson Ave. property based on poor economic times. (Ray Testimony.)

15. The Taxpayer appealed to this Board on August 20, 2010, stating: “Taxpayer disputes value due to income & expense data that will be provided.” (Appeal Form.)
16. The Taxpayer argued the 8.01 percent capitalization rate used by the DOR is unrealistically low, and only newer apartments would be valued at this rate. (Taxpayer’s December 15, 2010 submittal.)
17. The Taxpayer supplied income and expense information on each of the subject properties. Using an assumed capitalization rate of 10 percent, the Taxpayer requested a value of \$232,033.17 for 1911 8th Ave. North and \$678,801.29 for 1107 Alderson Ave. (Taxpayer’s December 15, 2010 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. 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 expense 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. (ARM 42.18.110(12).)
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).

Real property is valued for tax purposes using market data, cost data, income data, or a combination of several data sources to determine valuation. The income approach to value is most commonly used when valuing income producing properties. 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. The formula used by the Department to estimate the market value of income-producing property is: Value equals Income divided by Capitalization Rate ($V=I/R$) which is a standard appraisal formula, and not at issue in this matter.

The Taxpayer claimed the capitalization rate used by the DOR was unrealistically low and suggested that a 10 percent capitalization rate more closely reflects real world rates. While the Taxpayer did submit actual information on income, the Taxpayer utilized this higher capitalization rate of 10% in calculating values, which significantly lowered the valuation of the subject property. The Taxpayer, however, failed to provide the Board with any evidence to support the higher capitalization rate. Thus, we will not consider

the higher capitalization rate because no evidence was presented to support its use.

We find that the DOR's capitalization rate of 8.01 percent, however, is based on actual sales and the net income those sold properties produced. The evidence demonstrates the DOR collects surveys (prior to the appraisal date) from commercial property owners in an effort to set a reliable capitalization rate for rural and urban areas of Montana. The survey produces a large amount of data, which the DOR confirms through third party sources, to produce an accurate outcome. Thus, there is significant evidence that the capitalization rate is set by objective data collection methods.

Out of necessity, Montana uses a mass appraisal approach to provide uniformity and consistency to ad valorem taxation. Without this approach it would be impossible to produce timely, accurate or equitable values across the state without a significant cost increase to the DOR. Under a mass appraisal system, income-producing property is valued according to the income produced by similar properties in that geographic area, not the income that the individual property produces as that reflects management choices not relevant to tax valuation.

This Board concludes the evidence presented by the DOR did support the values assessed. This Board also concludes the Taxpayer has not provided evidence that the DOR appraised value for July 1, 2008 is not fair market value.

Thus, this Board finds the assessed value set by the DOR, and affirmed by the Yellowstone County Tax Appeal Board, is 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 Department of Revenue and affirmed 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:

JJR, LLC.
2646 Grand Ave. 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

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

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

/s/ _____
DONNA EUBANK
Paralegal