

BEFORE THE STATE TAX APPEAL BOARD
OF THE STATE OF MONTANA

LJJ, L.L.C.,)	
)	DOCKET NO.: PT-2009-112B
Appellant,)	
-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

LJJ, 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 property located at 2340 North Frontage Road, Billings, Montana. The Taxpayer argued the DOR overvalued the property 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 property appropriately for tax purposes for tax year 2009?

Summary

LJJ, 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 modified value set by 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 property is a 2.093 acre lot with a 8880 square foot multi-use office/showroom and warehouse on the property, with the following legal descriptions:

Lot 3, Block 1, Lockwood Industrial Park Subdivision 311, Section 25, Township 01 North, Range 26 East, Yellowstone County, State of Montana. (Appeal Form, CTAB Exh. A, p. 1.)

3. The Taxpayer was represented at the Yellowstone CTAB hearing by Jennifer Ray, Assistant Manager of LJJ, 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 property. This resulted in a value of \$401,700 for the subject property. (CTAB Exh. A, p.1.)
6. The information used in calculating the income approach is standard data used to value commercial properties in the Lockwood area of Billings. (Nelson Testimony.)
7. The income approach to value is generally a calculation of net income divided by a capitalization rate to determine the market value of the property. (Nelson Testimony.)

8. The net operating income (NOI) is derived by surveying property owners in the Lockwood area to determine typical market rents, vacancy rates, and expenses. (Nelson Testimony.)
9. The DOR uses a capitalization rate of 8.8 percent derived from actual sales of commercial properties and a survey of property owners to determine actual NOI for those buildings. (Nelson Testimony.)
10. The Taxpayer filed a Request for Informal Review (AB-26) on September 8, 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 reduction in value. (Nelson Testimony, AB-26 Form.)
12. The Taxpayer filed an appeal with the Yellowstone County Tax Appeal Board (CTAB) on June 4, 2010, stating:

“This is a new construction commercial building that is for lease. We are requesting the value of this building to remain at the previous value.” (Appeal Form.)
13. The Yellowstone CTAB heard the appeals on July 28, 2010.
14. During the CTAB hearing, the Taxpayer requested the Board set the value of the subject property at the 2002 calculated reappraisal value of \$258,386 based on the building being built in 2008 and finished in 2009 and still vacant. (Ray Testimony.)
15. The Taxpayer appealed to this Board on September 9, 2010, stating:

“This is a vacant building that has never been leased, taxpayer requests lower value due to lack of income & out going expenses.” (Appeal Form.)
16. The Taxpayer supplied estimated income and expense information for the subject property and requested a market value of \$216,301.02.
17. The Taxpayer used the DOR’s NOI of \$4.00 per square foot as the assumed income before expenses in calculating their estimated market

value, and then removed additional estimated expenses. (Taxpayer's January 7, 2011 submittal.)

18. The DOR's NOI of \$35,346 or \$4.00 per square foot included both income and expenses for typical properties. (CTAB Exh. A, p.4.)
19. The CTAB modified the DOR value for the subject property. The following reason was stated:

“The property values are set as follows: Land \$102,316.00 which is based on the starting point of the State Tax Appeal Board's value set in the past and increase in the value of the property over time. Building set at \$288,130.00 which is the Department of Revenue's numbers based on variables that they have set and that is absent any additional testimony by the taxpayer. The total appraised value is \$390,446.00.”(Appeal Form.)

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 appeals or court actions. (42.20.108(3), ARM.)
7. When using the income approach, the Department will develop overall capitalization rates which may be according to use type, location, and age of improvements. (42.20.109(1), ARM.)
8. A straight-line recapture rate and effective tax rate will be 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).

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. Average income and capitalization rates for all similar properties are used rather than the income of the subject property which can reflect management choices not relevant to the true market value.

The Department may use different approaches (for example, market, income, and/or cost approaches), depending on available data, to appraise a property. *See, e.g., Albright v. Montana Department of Revenue*, 281 Mont. 196, 933 P.2d 815 (1997). When determining the market value of commercial property

during a mass appraisal, it is, therefore, most appropriate for the DOR appraisers to first consider an income approach which requires neither an inspection nor a separate land valuation process. In this instance, Appraiser Nelson testified she had completed a cost approach on this property because it wasn't being leased. The cost approach, however, resulted in a higher value than the income approach. Thus, it appears that the appraiser used her judgment to determine the appropriate value for the subject property. Because the income approach to value is the most common valuation method used by investors and the market, utilizing a higher cost approach valuation will not reflect a true market value, but may overvalue a particular property. We find the evidence presented by the DOR supported the market value established by the income approach, and we will not overturn the appraiser's judgment.

The Taxpayer argues the subject property value should be reduced as the building has not been leased after completing construction in 2009. While the Taxpayer did submit information on expenses, the Taxpayer utilized the DOR's calculated NOI as the starting point income and then, in effect, doubled the expenses resulting in a much reduced value. The Taxpayer failed to provide the Board with any evidence to support the requested market value.

We find no errors in the DOR's valuation methodology. The CTAB, however, reduced the value of the property to \$390,446. CTABs 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 and thus, absent error, we will confirm their valuation. In this instance, we uphold the determination of the CTAB.

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.

Since the DOR did not cross appeal in this case, and the evidence supports the CTAB value, we see no reason to modify the CTAB value.

Thus it is the opinion of this Board that the assessed value set by the DOR was correctly modified by the decision of the Yellowstone County Tax Appeal Board.

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 \$390,446 as modified by the 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:

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