

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

NIKLAUS SCHMUTZ,)	DOCKET NO.: PT-2009-152
)	
Appellant,)	
)	
-vs-)	FACTUAL BACKGROUND,
)	CONCLUSIONS OF LAW,
THE DEPARTMENT OF REVENUE)	ORDER and OPPORTUNITY
OF THE STATE OF MONTANA,)	FOR JUDICIAL REVIEW
)	
Respondent,)	

Statement of Case

Niklaus Schmutz (Taxpayer) appealed a decision of the Gallatin County Tax Appeal Board (CTAB) relating to the DOR’s valuation of the property located at 107 South Broadway Street in Manhattan, Montana.

The Taxpayer argues the DOR overvalued the property for tax purposes, and seeks a reduction in value assigned by the DOR. At the State Tax Appeal Board (Board) hearing held on December 5, 2011, the Taxpayer represented himself, and Ann Schmutz-Tappan also provided testimony and evidence in support of the appeal. The DOR was represented by Amanda Meyers, Tax Counsel, and Mark J. Olson, Area Manager, who presented testimony and evidence in opposition to the appeal.

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 2009?

Summary

Niklaus Schmutz 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 Gallatin 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 downtown Manhattan situated on a 17,500 square foot land site described as:

Lots 28 - 32, Block 19, Section 10, Township 01N, Range 03E, of the Manhattan Original Plat, in Gallatin County, State of Montana. (DOR Exh. B, Property Record Card.)
3. The DOR used the cost approach to set the value for tax year 2009, valuing the subject property at \$218,275, with a land value of \$107,175 and an improvement value of \$111,100. (Appeal Form, DOR Exh. B.)
4. The Taxpayer is asking for a value of \$133,284 consisting of \$58,284 for the land and \$75,000 for the improvements. (Schmutz Testimony, Appeal Form.)
5. Typically, the preferred valuation method for commercial property is the income approach to value commercial property. 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. (Olson Testimony, DOR Exh. B.)

6. The DOR used the cost approach to value the subject improvements and a Computer Aided Land Pricing (CALP) model to value the land. (Olson Testimony, DOR Exhs. B, E, & F, CTAB Exh. J.)
7. 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. (Olson Testimony, DOR Exhs. B & E.) This building value is then added to the land value set by the CALP.
8. The CALP is based on sales of seven different properties. All sales and the subject property in the CALP are located within Neighborhood 112, which encompasses the town of Manhattan in Gallatin County. There was no indication that the sales were not arms length sales. (Olson Testimony, DOR Exh. F.)
9. The DOR determined that 15,000 square feet is the base size for valuing commercial lots in Neighborhood 112. The first 15,000 square feet are valued at \$6.00 per square foot and each additional residual square foot would be valued at \$5.90. (DOR Exh. F.) All of the sale properties used in the CALP were bare tract land and had sale dates prior to the valuation date of July 1, 2008. (Olson Testimony.) Those sale prices are time-trended to July 1, 2008 by adding or subtracting a monthly rate of change calculated by comparing the sales prices of properties that have sold twice during the period (“paired sales”).
10. The DOR used a paired-sale analysis used in Gallatin County, to arrive at the 1.28 percent monthly rate of change used in the Neighborhood 112 CALP. The DOR applied a straight-line appreciation method in calculating the time adjusted values and ultimately the per square foot base rate value

used to value commercial land in Neighborhood 112. (Olson Testimony, DOR Post-hearing Exhibit.)

11. The DOR also supplied a map of the properties used in the paired sale analysis in relation to the subject property. (DOR Post-hearing Exhibit.)
12. The Taxpayer filed a Request for Informal Review (AB-26) with the DOR on September 12, 2009. The DOR made no adjustments to the values of the property for tax years 2009 and 2010 but raised the total value to \$257,305 for the remainder of the appraisal cycle after inspection revealed the completion of an exterior remodel completed in 2010. (Olson Testimony, DORExh. A.)
13. The Taxpayer filed an appeal with the Gallatin County Tax Appeal Board (CTAB) on July 20, 2011, stating:

“Right after the appraisal the country/county went into a recession. Values declined.” (Appeal Form.)
14. The Gallatin CTAB heard the appeal on September 21, 2011, and adjusted the value of the improvements to \$95,000.
15. The Taxpayer appealed to this Board on October 21, 2011, stating:

“There were no comparable sales. 75% of the properties went into foreclosure and most of Manhattan commercial spaces are vacant for over 12 months.” (Appeal Form.)
16. The Taxpayer testified that he does not believe the property is worth any more than he paid for it. He also contends that repairs made to the building do not add value. Rather, these repairs only maintain the existing value. (Schmutz Testimony.)
17. The Taxpayer submitted a Consumer Price Index (CPI) calculator showing the inflation rate for the years 2003 through 2008. Applying these rates, the Taxpayer contends the value on his property should be \$126,163.38. (Schmutz Testimony, Taxpayer Exh. 2.)

18. The Taxpayer further believes the DOR should not compare the subject property to any property that is currently in foreclosure or delinquent in their taxes. He claims this is comparing a taxpayer with a non-taxpayer. (Schmutz Testimony.)
19. Appraiser Olson testified there were not enough sales of commercial property in Manhattan to perform a market appraisal, in response to the question why the DOR did not perform a market approach valuation. (Olson Testimony.)
20. The Taxpayer submitted post-hearing rebuttal material, claiming several problems with the comparables used by the DOR in their paired sale analysis. He and his wife contend the properties are in fast growing and large economy areas and too far away to be compared to the subject property. (Schmutz Post-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. The appraised value supported by the most defensible valuation information serves as the value for ad valorem tax purposes. (ARM 42.18.110(12).)
6. 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 2009. 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).

In this instance, after reviewing the evidence presented, we find that determining a market value requires reviewing a cost approach methodology. There was insufficient data presented to determine a valuation using comparable market sales. *See* EP 19. Further, the income approach methodology lacked a reasonable basis to be applied to this particular property. (*See* Olson testimony.) Unfortunately, this leaves the Board with little market data to determine whether the DOR valuation is appropriate in this instance.

Before we review the evidence of value, we will address the Taxpayer's claim that the property value declined after the lien date. 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*. Property values fluctuate with the economic climate and the only way to achieve statewide equalization is to use the same date for all properties being valued. Thus, all taxpayers experience the same increase or decrease and share the tax burden equally. Furthermore, using a specific valuation date is a well established and adjudicated method used by the DOR and mandated by the Montana legislature. *See, e.g.,* §15-7-111, MCA, § 15-8-201, MCA, *Albright v. Montana Department of Revenue*, 281 Mont. 196, 933 P.2d 815 (1997). Thus, the effect of a declining market after the lien date need not be addressed in this matter.

As a separate argument, the Taxpayer claims the DOR value has increased 100 percent and is too high compared to the last reappraisal cycle. Again, we would note that the property is valued on a specific date, not in comparison to any prior valuation. Additionally, though Mr. Schmutz testified his property is not worth any more than he paid for it, he calculated a CPI for each year of the appraisal cycle to arrive at an increased value of \$126,163.38. *See EP 17*. The Board notes, however, the market value of real property does not necessarily follow the CPI and that standard real estate appraisal techniques are a more accurate determination of value.

We now turn to examination of the value of the subject property as of 2009. 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 \$111,100 for the subject improvements. This required the DOR to

calculate a value of the improvements based on new construction, and depreciate the value of the building to reflect its age and condition.

Improvement Value

We find the DOR demonstrated that the calculations were accurate and appropriate for the subject improvements. *See* EPs 5, 6, & 7. The Taxpayer provided testimony in opposition to the value, but provided no probative evidence that the DOR improperly calculated the improvement value. The DOR presented evidence that the appraiser physically reviewed the property and made adjustments to the improvement value through the informal review process.

The Taxpayer's claim that maintenance to a property only maintains value does not hold true because, historically, buildings in good repair sell for more than dilapidated properties. Thus, there is little credence to the Taxpayer's argument.

The Gallatin County CTAB reduced the value of the improvements. The CTAB, however, provided no justification for their reduction to the improvement value, and we can find no justification for the reduction. Thus, we modify the CTAB decision and set the value of the improvements at the original DOR value.

Land value for Cost Approach

When using the cost approach, the DOR must determine the value of the land to add to the value of the improvements to come to a total market value for the property. In this case, the DOR used a CALP model based on verified commercial land sales in Neighborhood 112, which includes the subject property. The CALP model indicated a land value of \$107,175. All the CALP sales occurred prior to the assessment date of July 1, 2008, and were

time adjusted to the assessment date. *See* EP 9. While all of the properties in the CALP are located within Manhattan, the rate of change to determine a valuation as of the lien date was created using a more wide-ranging set of paired sales. (Testimony Olson, post-hearing submissions.) In this instance, the Board requested information from the DOR on the monthly rate of change used in the time adjustment, and how it was derived. The DOR submitted a county-wide paired-sale analysis for commercial properties showing the time adjustment was calculated using a monthly straight-line appreciation of 1.28 percent based on sales throughout the county. *See* EP 10&11. The overwhelming majority of those sales were in Bozeman and Belgrade, which were experiencing rapid growth through that time period. This growth has been extensively demonstrated to this Board in cases presented in the past 18 months, and is generally known. The Board questions the validity of using this county-wide rate of change and applying it to the commercial properties in rural areas of Gallatin County when most of the sales occurred in the urban growth areas closer to Bozeman and Belgrade.

In reviewing the paired-sale analysis, the Board finds only one sale from the Manhattan area was used and it reflected only a 0.1 percent monthly rate of change. The evidence demonstrates the paired sale property was adjacent to the highway, which is significantly different than valuing main-street property such as the subject lot. In this instance, however, the Board has no evidence to determine whether the value of a main-street business would be higher or lower than a property adjacent to the highway. Testimony on the part of the DOR and the Taxpayer generally indicated the properties adjacent to the highway were developing quickly while Main Street properties were sitting empty. Thus, the evidence demonstrates the rate of change for the subject property is unlikely to be higher. Certainly, the difference between a 0.1

percent monthly increase in Manhattan and a 1.28 per month increase in urban Gallatin County is a significant difference. We find the evidence shows the subject property is not properly subject to such a high rate of change of 1.28 percent per month. When the lower rate of change (0.1 percent) was applied to the subject land, we arrive at a land value of \$62,481. It is the opinion of the Board that this value is within reason and very close to the market value set by sales that did occur in Manhattan for the 2008 appraisal cycle. *See* EP 8. In this instance, using a rate of change derived from the active Bozeman market does not comport with the evidence presented to value the Manhattan main-street business, and we find the market value for the subject land should be adjusted accordingly.

We note that the Taxpayer claims he should not be compared to properties in which taxes have not been paid. All properties have taxes assessed based on statutory requirements, and a mechanism for collection of such taxes. The effect of the collection of taxes will not affect the market values for the assessment date at issue, and thus the issue of failure of tax payment is not relevant in this case.

Therefore, it is the opinion of this Board that the assessed values reflect the cost approach value of \$111,100 for the improvements, set by the DOR, and the modified land value of \$62,481 calculated by this Board.

Order

IT IS THEREFORE ORDERED by the State Tax Appeal Board of the State of Montana that the subject property value shall be modified and entered on the tax rolls of Gallatin County at a 2009 value of \$173,581.

Dated this 17th 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 17th 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:

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