

BEFORE THE STATE TAX APPEAL BOARD
OF THE STATE OF MONTANA

THE DEPARTMENT OF REVENUE)	
OF THE STATE OF MONTANA,)	DOCKET NO.: PT-2002-15
)	
Appellant,)	
)	
-vs-)	FACTUAL BACKGROUND,
)	CONCLUSIONS OF LAW,
CHARLES SKORUPA,)	ORDER and OPPORTUNITY
)	<u>FOR JUDICIAL REVIEW</u>
Respondent.)	

The above-entitled appeal was heard on February 11, 2003, in the City of Billings, 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.

The Department of Revenue (the DOR) represented by Specialist Rocky Haralson and Appraiser Larry Richards presented testimony in support of the appeal. Charles Skorupa (the Taxpayer) presented testimony against 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.

The DOR is the Appellant in this proceeding and therefore has the burden of proof. 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 of the DOR, the market value of the property is \$1,286 for the land and value for the improvements is modified as set forth in the following opinion. The decision of the Rosebud County Tax Appeal Board shall be modified.

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 Board has jurisdiction over this matter in accordance with § 15-2-301 MCA.

3. The property which is the subject of this appeal is described as:

Certificate of Survey 48726 and improvements located thereon. Rosebud County, State of Montana (Assessor Code – 4990)

4. For the current appraisal cycle the DOR appraised the subject property at \$1,286 for the land and \$53,000 for the improvements.

5. The Taxpayer filed Form AB-26, Request for Informal Review with the DOR on November 29, 2001. The DOR appraiser reduced the value of the improvements to \$43,800 subsequent to an external inspection, stating:

Reviewed 4/12/2002 @ 11:30 A.M. Building not internally accessible. Some windows were broken. Removed heat & air condition from building value. Value changed in CAMA on improvements from \$53,000 to \$43,800.

6. The Taxpayer appealed the DOR's market value for the improvements to the Rosebud County Tax Appeal Board (County Board) requesting the value be adjusted to \$10,000. The Taxpayer cited the following:

Vandals destroyed the building making it worthless for sale or fixing it up.

7. In its December 2, 2002 decision, the County Board adjusted the value for the improvements, stating:

The Rosebud County Tax Appeal Board finds for the Appellant in a reduction of their property value from the .86 local index factor used by the Department of Revenue to a .25 local index factor for the following reasons:

1. The remoteness of the area, 25 miles from Forsyth, and 5 miles to the highway.
 2. Poor Ranchland.
 3. No ranch headquarter near site.
 4. No water source.
8. The DOR appealed the County Board's decision to this Board on December 17, 2002, stating:

The DOR is appealing this decision for the following reasons:

1. Rosebud CTAB adjusted a local index factor with reasons that do not support the purpose and function of a local index factor.
2. Reasons given for adjustments do not pertain to physical depreciation, the stated reason of dissatisfaction of taxpayer in appeal.

STATEMENT OF THE ISSUE

The issue before the Board is the market value of the subject property as of January 1, 1997, the base appraisal date for the current appraisal cycle.

DOR'S CONTENTIONS

The DOR Exhibit A is a document containing information used to value the improvements based on the cost approach to value. Summarized, this Exhibit illustrates the following:

Land Data

Acres	Land Value
6.43	\$1,286

Improvement Data

Structure Type (398) – Warehouse	Quality Grade - Fair
Year Built - 1986	Physical Condition – (1) - Poor
Size – 6,820 SF	Functional Utility – (1) - Poor
Structure Type (GF5) - Garage	
Year Built - 1986	Physical Condition – (2) - Fair
Size – 24 X 24 (576 SF)	Functional Utility – (1) - Fair
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Improvement Value from the Cost Approach	\$53,000
Total Property Value	\$54,286

DOR Exhibit C is additional data from the DOR's Computer Assisted Mass Appraisal System (CAMAS) for the warehouse as illustrated on Exhibit A and the additional garage structure. Summarized, this Exhibit illustrates the following:

Warehouse	
Physical Condition – (1) – Poor	
Functional Utility – (1) – Poor	
Percent Good 45 (Depreciation – 55%)	
Replacement Cost New Less Depreciation (RCNLD)	\$94,190
Grade Factor – 78%	
Local Index – 78%	
Economic Condition Factor – 76%	
Replacement Cost New Less Depreciation (RCNLD)	\$48,010
Garage	
Size – 24 X 24 (576 SF)	
Year Built – 1986	
Physical Condition – 2 – Fair	
Functional Utility – 2 – Fair	
Economic Condition Factor – 76%	
Other Building Yard Improvement (OBY) Index – 78%	
Appraised Value	<u>\$ 4,970</u>
Total Improvement Value	\$53,000 Rounded

DOR Exhibit D illustrates the "Commercial Local Index's" for the current appraisal cycle and the 2003 appraisal cycle, or 78% and 86% respectively.

DOR Exhibit E is a copy of Form AB-26, Request for Informal Review. The review by the DOR appraiser resulted in a reduced market value for the improvements to \$43,800. Mr. Richards testified that the values illustrated on Exhibits A and C are prior to any adjustment.

Mr. Haralson testified that the DOR took issue with the County Board's decision with regards to the adjustment of the

local index factor from 86% to 25%. Mr. Haralson testified that the local index factor is a reflection of local construction costs that is applied to all commercial properties within Rosebud County. It would be inappropriate to adjust this index for one particular property.

The DOR does not dispute the fact the Taxpayer purchased the property for \$20,075, but does take the position that the nature of the transaction, i.e. sealed bid, does not meet the test of an "arm's-length" transaction. **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 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. It is the position of the DOR that the property was not exposed to the market in a typical manner, i.e. local real estate listing, therefore rendering the transaction as "non arm's-length."

TAXPAYER'S CONTENTIONS

The Taxpayer testified that the property was purchased for \$20,075 from the federal government in 1999 through a sealed bid. Information about the property was obtained through the Air Force base located in Great Falls and the bid

form was received from a federal office in Texas. To be eligible, 10% was due at the time of the bid and the balance was due upon acceptance.

The property is approximately twenty-three miles north of Forsyth. Eighteen of those miles are on paved road and five are on gravel road. The property is remotely located.

The Taxpayer has contacted a local real estate agent about selling the property. To date, there have been no serious interested buyers.

The federal government built the property and used it for simulated bombing runs for the Air Force. The warehouse structure housed the necessary electronic equipment. The military personnel resided off the site, most likely in Forsyth.

The Taxpayer does not dispute that the property was not listed for sale through a local real estate agent, but it is his opinion there was willingness to buy and sell by both parties.

BOARD DISCUSSION

The burden of appeal rests with the DOR since this appeal was brought by the DOR.

The Board does not dispute that the sealed bid process is suspect when attempting to meet the test of a true "arm's-length" transaction. However, it undoubtedly offers an

indication of value. The transaction raises the issue that, if the property were actually worth \$54,286, as determined by the DOR, the Taxpayer benefited significantly when he purchased it for \$20,075 in 1999. The taxpayer has a verbal listing agreement with a local real estate agent, but there has been no serious interest in the property. The Taxpayer testified that he would like nothing more than get his investment back at the present time.

The Rosebud County Board reduced the DOR's local index factor from 86% to 25%. The local Board did not assign a value based upon its modification, but this reduction in the index factor would reduce the market value significantly.

The DOR testified that the local index factor is a reflection of local construction costs. The DOR testified that, had it not appealed the County Board's decision, it would appear to acquiesce in the presumption that a 25% index factor is appropriate for Rosebud County. Thus, bad precedence and an inequity for other commercial properties within Rosebud County would exist.

The DOR valued the subject improvements based upon the cost approach to value. ***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.* (b) *If the department uses construction cost as one*

approximation of market value, the department shall fully consider reduction in value caused by depreciation, whether through physical depreciation, functional obsolescence, or economic obsolescence (emphasis supplied). In the decision of the County Board they stated, "The Rosebud County Tax Appeal Board finds for the Appellant in a reduction of their property value from the .86 local index factor used by the Department of Revenue to a .25 local index factor for the following reasons:

1. The remoteness of the area, 25 miles from Forsyth, and 5 miles to the highway.
2. Poor Ranchland.
3. No ranch headquarter near site.
4. No water source.

DOR Exhibit D indicates that the local index factor for the current appraisal cycle is 78%, not 86% as indicated by the local Board. This Board does agree with the DOR that the County Board erred when it reduced the index factor. There is nothing to suggest that local construction costs are 25%. When reading the local Board's decision it appears, for the most part, that the adjustment it was attempting to apply to the property is one of an economic nature. The DOR has the ability to recognize economic conditions when establishing value and has done just that. The DOR applied an economic condition factor (ECF) of 78% to the subject property. The DOR also testified that this ECF is applied to all commercial

property within Rosebud County. The DOR's Appraisal Manual defines the "economic condition factor" as:

a component of depreciation or market adjustment that is usually applied after normal depreciation. It normally 1.00 (100%) for the majority of properties where the cost index has been property established and the depreciation schedules have been adequately calibrated.

It has a role in representing the effect of the economic climate on unique properties in a boom or bust economy. It can affect individual properties, or it can affect a whole class pf properties (emphasis supplied).

The one aspect of this property that makes it unique is its remote location. It's apparent that the property was constructed with a specific use in mind. The federal government, for whatever reason, made the decision to terminate use of the property and dispose of it. No one disputes that this property, with its remote location, has a very limited market. It is the opinion of this Board that the County Board was attempting to adjust the ECF of this property based on the preponderance of the evidence before it.

As **MCA 15-8-111 (c)** states, there are three forms of depreciation: physical, functional and economic. For the subject property, the DOR assigned the following for the structures:

	<u>Warehouse</u>	<u>Garage</u>
Physical Depreciation	Poor (1)	Fair (2)
Functional Utility/Obsolescence	Poor (1)	Fair (2)
Total Physical & Functional Depreciation	55%	19%
Economic Condition Factor/Obsolescence	76%	76%

The Taxpayer did not dispute the DOR's determination of

physical and functional depreciation, especially with the vandalism that has occurred to the property. The DOR adjusted the value of the property after the Taxpayer filed the Form AB-26. The DOR did an external inspection of the property and removed values assigned for the heating and air conditioning system (HVAC). Removing the entire value for the HVAC gives the appearance that no system exists, even though considerable testimony was heard on the type of system that is present in the warehouse structure. It is the opinion of the Board that, if a HVAC system is in place, the appraisal process should recognize it and value it based on its condition and utility. From the DOR's assignment of "Poor" for physical and functional depreciation, it's apparent the value has been reduced adequately for this component.

The DOR testified that, if the structures were located within the city limits of Forsyth, an average quality grade would have been assigned for the structure. The DOR also testified that the depreciation was also reduced based on the property's location. It is the opinion of the Board that the application of an inferior quality of construction based upon a property's location is an inappropriate method to appraise a property. The Board commends the DOR for attempting to recognize the property's less than desirable location, but it is our opinion that the ECF would be the most appropriate

place within the appraisal process to do so. It is also the opinion of this Board that the local Board attempted to do just this but erroneously applied it to the local index factor, thus prompting the appeal by the DOR.

It is the opinion of this Board that the DOR's CAMAS reflect the following:

1. Land value remains at \$1,286.
2. Quality of construction is "average" for both the warehouse and garage.
3. The HVAC system is put back on the appraisal.
4. The physical condition and functional utility remain unchanged for the warehouse and garage.
5. The ECF for this property reflect 25%.

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. (2) (a) 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. (b) If the department uses construction cost as one approximation of market value, the department shall fully consider reduction in value caused by depreciation, whether through physical depreciation, functional

obsolescence, or economic obsolescence.

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. The Board finds that the evidence presented supports its conclusion that the decision of the Rosebud County Tax Appeal Board be modified.

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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 Rosebud County by the local Department of Revenue office at the value of \$1,286 for the land and the value of the improvements be modified consistent with the discussion above. The appeal of the DOR is granted in part and denied in part.

Dated this 5th day of March, 2003.

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 5th day of March, 2003, 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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