

BEFORE THE STATE TAX APPEAL BOARD
OF THE STATE OF MONTANA

GLEN & JOHANNA WOHL,)	
)	DOCKET NO.: PT-2009-35
Appellants,)	
)	
vs.)	FACTUAL BACKGROUND,
)	CONCLUSIONS OF LAW,
THE DEPARTMENT OF REVENUE)	ORDER, & OPPORTUNITY
OF THE STATE OF MONTANA,)	FOR JUDICIAL REVIEW
)	
Respondent.)	

Statement of Case

Glen and Johanna Wohl (Taxpayers) appealed a decision of the Missoula County Tax Appeal Board (CTAB) which reduced the valuation originally set by the Department of Revenue (DOR) on their business property, S&S Payless Storage. The property at issue is located at 3806 South Avenue West in Missoula, geocode 04-2199-25-3-08-03-0000. The parties agree on the value of the land but dispute the value of the buildings. The matter was heard before this Board on the record, which included the materials and transcript of the CTAB hearing and additional materials, photos and explanations submitted by Taxpayers.

The duty of this Board, having fully considered the exhibits, evidence submissions and all matters presented, is to determine the appropriate value for the property based on a preponderance of the evidence.

Issue

The issue before this Board is whether the Department of Revenue determined the proper value for the subject property for tax year 2009?

Summary

The Taxpayers in this action bear the burden of proof. Based on a preponderance of the evidence we uphold the value assigned by the Missoula CTAB.

Findings of Fact

1. Due, proper and sufficient notice was given of this matter. This matter was considered pursuant to §15-2-301(2), MCA.
2. The DOR appraised the subject property at \$153,870 for the land and \$621,600 for the buildings, for a total of \$775,470. Taxpayers contend that the market value of the property is \$153,870 for the land and \$430,013 for the buildings, for a total of \$583,883. (DOR Exhibit A.)
3. Taxpayers filed a timely appeal with the Missoula CTAB on September 23, 2009. (Property Tax Appeal Form.) A hearing was held February 23, 2010.
4. Taxpayers were represented by Glen Wohl and the DOR was represented by Wes Redden and James Lenington.
5. Taxpayers submitted a letter from their CPA stating their gross income from the property for each of the last five years, which averaged \$47,638. (Taxpayer Exhibit A.) Taxpayers argued that nobody would pay \$775,470 for a property that produced so little income.
6. Taxpayers submitted a copy of the Missoula Building Valuation Data used to calculate building inspection fees. (Taxpayer Exhibit B.) The data shows a cost per square foot of \$22.12 for Type III-N warehouses (cinder block) which Taxpayers used to calculate the value they requested from the CTAB (19,440 square feet at \$22.12 per square foot equals \$430,012).
7. Taxpayers submitted a copy of an advertisement which ran in the Missoulian for four weeks during October 2009 offering to sell the business for \$750,000

to see if there were any willing buyers at that price. Wohl had over a dozen calls in response but no offers. (Taxpayer Exhibit C.)

8. The DOR submitted the Property Record Card (PRC) for the property. (DOR Exhibit A.) The DOR explained the property had been valued using the cost method because a computer error in the income method calculations had resulted in that figure being an obvious error as it was based on a single storage building instead of the six on Taxpayer's property. (Tr. p. 13.)
9. The DOR assumptions about the property used in the cost method calculations were not disputed by Taxpayers and produced a replacement cost new less depreciation value of \$95,581 per building for six buildings, plus fence, lights and paving producing a total value of \$621,600. (Tr. p. 13.)
10. By this method, the cost of replacement was estimated to be \$29.50 per square foot. With lights, fence, paving and land, it is \$39.89 per square foot. (Tr. p. 14 and DOR Exhibit A.)
11. In preparation for the hearing, the DOR also calculated the value by the income method as a check on the cost value. Estimating an average rental income derived from their survey information of \$4 per square foot, less average vacancy and collection, yields a potential gross income of \$69,992. Using a 7 percent capitalization rate, the value would be \$747,210. (Tr. p. 24.)
12. The DOR presented evidence of five other mini-storage businesses in Missoula that had been sold between 2003 and 2007 for prices ranging from \$34.45 to \$51.12 per square foot, compared to the \$39.89 arrived at for the Taxpayers' property. The sale prices were not time-trended to July 1, 2008, the lien date for Taxpayers' property. (Tr. p.22.)
13. Taxpayers pointed out that one of those properties has on-site management and the other four all had security fences, neither of which is true for the Taxpayers' property. (Tr. p. 28.)

14. The Missoula CTAB rejected Taxpayers' arguments and found the DOR's arguments not supported by sufficient evidence. Instead, the Board devised a valuation based on the square foot costs of the comparable storage companies using a building-to-land ratio derived from the subject property. They came to a final value of \$544,320 for the building for a total valuation of \$698,190 including the land. (Appeal Form.)
15. Taxpayers made a timely appeal to this Board claiming that "The Missoula County Tax Appeal Board did not approve taxpayer's requested value for buildings. The facts support approval of market value as determined by taxpayer." (Appeal Form.)
16. The DOR did not cross-appeal the decision of the Missoula CTAB nor was any further evidence submitted to the Board from the DOR.
17. Taxpayers submitted a letter to this board, dated April 30, 2010, summarizing the arguments made at the CTAB hearing and adding estimates for the repair of the asphalt and damaged roof and repainting. They included photos documenting the need for repair. Again, Taxpayers request consideration of the letter from their accountant summarizing their gross income for the last five years, despite the Missoula CTAB's insistence on a Schedule E to prove their income.

Principles of Law

1. The State Tax Appeal Board has jurisdiction over this matter. (§ 15-2-301, MCA.)
2. It is true, as a general rule, the DOR appraisal is presumed to be correct and that the taxpayer must overcome this presumption. *Western Airlines, Inc., v. Catherine Michunovich et al.*, 149 Mont. 347, 428 P.2d 3(1967). The DOR 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).

3. 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.)

Board Discussion

By law, property must be valued at 100% of market value. Section 15-8-111, MCA. For commercial properties, the Department generally considers a market, income and cost approach to value. The DOR in this case used the cost method to determine value because of errors in the income model. Generally, the income method is considered to be a more accurate way of determining the value of a going concern, in part because buyers and sellers of commercial property use income figures to derive sales prices. In this instance, there were problems with the income approach to determine value and it was not used.

When the income approach to value is used, however, the figures used are generally those developed by the DOR from the survey information it collects and collates from local area businesses. Typical income per square foot is multiplied by the dimensions of the subject property to develop a hypothetical income to derive a market value of the property rather than the value to a specific taxpayer. Thus, a taxpayer may choose to charge low rent to minimize vacancy or maintenance or a

higher rent to maximize income but those management choices do not change the market value of the property.

Taxpayers argue their property is properly valued on its average annual gross income. They failed to provide evidence that their annual gross income was closer to market value than the DOR's. Taxpayers submitted no evidence that the DOR's assumed rate of \$4 per square foot was unreasonable or that their property was unlike those to which it was being compared. Other comparable storage units have better security fencing but Taxpayers' units are the only ones constructed of concrete block, a sturdier and more durable material offering greater security and protection to renters' belongings. Mr. Wohl admitted in the CTAB hearing he had only raised his rates once in the 23 years since he built the storage units. Thus, the Taxpayers' claim that his value should be based on his average annual gross income of \$47,638 is insupportable.

We note taxpayers' own requested valuation is not based on average gross income but rather on the \$22.12 per square foot that the Missoula Building Inspectors use to calculate their fees. If we were to use the taxpayers' income figure and apply the vacancy rate and maintenance expense assumptions used by the DOR, the value would be \$457,700 for land and buildings, a value far below comparable properties. We reject that option.

Secondly, the placing of an ad in the Missoulian in October of 2009 does not establish the error of the DOR's methodology. The property was valued as of July 1, 2008 according to law and the DOR is not allowed to consider evidence of value after that date. The adherence to one date for all property in the state is necessary to assure equality in the setting of property values. Furthermore, the low rents charged for the units may well have discouraged potential buyers who responded to the ads.

Third, the cost schedules used by the Missoula Department of Public Works and Building inspection were developed for calculating inspection fees and are specific to

the tasks of the Missoula government. The DOR used a statewide sample of property and building data and has specifically updated this information for the recent reappraisal, surveying the costs of lumber and materials, labor, transportation and so on to devise the most accurate building costs possible. Those costs are then adjusted for each locale to accommodate regional building costs and then adjusted for the age of the building. The information in Taxpayers' charts is of unknown provenance and therefore cannot overcome the DOR data which shows a building cost of \$29.50 per square foot.

The DOR based its valuation on the replacement cost but the DOR also submitted evidence about five other storage facilities in Missoula which sold between 2003 and 2007 and developed a square-foot value from the sale prices which ranged from \$34.45 to \$51.12. Those costs were not time-trended to be comparable to July 1, 2008 (the valuation date) and little evidence of their comparability to the subject property was given. The information was submitted to show that the \$39.89 per square foot value assigned to the subject property was within the range of comparability.

The DOR also submitted a revised calculation of the value, based on potential income, of \$747,210. The detailed calculations are on the back of the PRC, showing a presumed vacancy rate, utilities, management fees and maintenance expenses. These calculations were explained in the CTAB hearing by James Lenington of the DOR but the CTAB decision rejects the information as inadequate. Instead, the CTAB calculated a cost per square foot by comparing the property to the five other storage facilities, assuming a standard land-to-building ratio for all the properties derived from the subject property, arriving at a value of \$28 per square foot. This methodology is not one used by professional appraisers, it was not briefed, argued for in the hearing, or explained in any detailed way that allows us to examine the assumptions upon which it is based or the comparability of the basic data. However, the resulting value

of \$544,320 for the building, \$698,190 for the whole property was not challenged by the DOR in a cross appeal.

We, therefore, affirm that value while not affirming the method in which it was calculated.

Order

IT IS THEREFORE ORDERED by the State Tax Appeal Board of the State of Montana that the subject property value shall be entered on the tax rolls of Missoula County at a 2009 tax year value of \$698,190. The decision of the Missoula County Tax Appeal Board is affirmed.

Dated this 16th of June, 2010.

BY ORDER OF THE
STATE TAX APPEAL BOARD

/s/ _____
KAREN E. POWELL, Chairwoman

/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 16th day of June, 2010, 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:

Glen & Johanna Wohl
2610 Glen Drive
Missoula, MT 59804

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

Wes Redden
James Lennington
Missoula County Appraisal Office
2681 Palmer St., Ste. I
Missoula, MT 59808

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

Michelle R. Crepeau
Office of Legal Affairs
Department of Revenue
Mitchell Building
Helena, MT 596702

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

Cindie Aplin, Secretary
Missoula County Tax Appeal Board
1015 Washburn
Missoula, MT 59801

U.S. Mail, Postage Prepaid
 Hand Delievered
 E-Mail

/s/ _____
DONNA EUBANK
Paralegal