

BEFORE THE STATE TAX APPEAL BOARD

OF THE STATE OF MONTANA

GLEN A. WOHL,)	
)	DOCKET NO.: PT-1997-27
Appellant,)	
)	
-vs-)	
)	
THE DEPARTMENT OF REVENUE)	FINDINGS OF FACT,
OF THE STATE OF MONTANA,)	CONCLUSIONS OF LAW,
)	ORDER and OPPORTUNITY
Respondent.)	<u>FOR JUDICIAL REVIEW</u>

The above-entitled appeal came on regularly for hearing on the 5th day of August, 1998, in the City of Missoula, 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 taxpayer, represented by Glen Wohl, presented testimony in support of the appeal. The Department of Revenue (DOR), represented by James Lennington, commercial appraiser, presented testimony in opposition to the appeal. Testimony was presented, exhibits were received and the Board then took the appeal under advisement; and the Board having fully considered the testimony, exhibits and all things and matters presented to it by all parties, finds and concludes as follows:

FINDINGS OF FACT

1. Due, proper and sufficient notice was given of this matter, the hearing hereon, and of the time and place of

said hearing. All parties were afforded opportunity to present evidence, oral and documentary.

2. The taxpayer is the owner of the property which is the subject of this appeal and which is described as follows:

Improvements only located on
Pt W **2** of Lot 3 less R/W Plat A
Rowe Acres Sub, containing 1.36 acres,
Missoula County, Montana.

3. For the 1997 tax year, the DOR appraised the subject property at a value of \$446,000 for the improvements.

4. The taxpayer appealed to the Missoula County Tax Appeal Board requesting a reduction in value to \$374,000 for the improvements.

5. The County Board denied the appeal.

6. The taxpayer then appealed that decision to this Board.

7. The taxpayer operates a mini-storage warehouse complex known as the S&S Payless Storage on this site. The value of the land was not appealed by the taxpayer.

TAXPAYER'S CONTENTIONS

Mr. Wohl testified that to replace S&S Payless Storage development would be \$372,020. (Ex 4) The subject property is approximately ten years old and suffers from deferred maintenance. He referred to painting, roofing, and

blacktop improvement. Mr. Wohl presented exhibits 2 and 3 as indications of the costs involved to repair and replace the asphalt and replacement of the damaged metal roofing.

A history of the mini-warehouse shows the taxes were increased by 46.3% in 1993 although there were no improvements or changes to the property, according to Mr. Wohl. He presented exhibit 1 prepared by his accountant, a statement of gross income, operating expenses, and net income for the years 1995, 1996, and 1997. The operating expenses column is believed to include the property taxes for each year.

Mr. Wohl was familiar with the income approach to value and understood that a value determined by that approach would include the land value as well. He stated that he would not separate the land from the improvements in an eventual sale. When asked about the proper capitalization rate to use on properties such as this he did not have an estimation of what he would think as appropriate. He was not aware of the numbers of the various size units or of what the units rent for since his wife handles all the rental of those units. He did testify that vacancy rates vary from 100% full down to about 20 empty units. He characterized the highest turnover of occupancy as occurring at the first of the month, and that would involve an average of 8 units vacant for the year. He added that the mini-warehouse market is very competitive, and

other than in 1993 he has been reluctant to raise the rental amounts.

Mr. Wohl testified that if a potential buyer could see where he could build a development such as this for less than one could be bought on the market, then the choice would be to build rather than to buy.

DOR CONTENTIONS

Mr. Lennington presented the property record card for the subject property. (Ex A) He also presented a listing of sales of mini-warehouse properties in the Missoula area. (Ex B)

The total value for the subject property after adding the land value is \$488,625. Exhibit B contains a per square foot comparison of the subject property to those properties that have sold. The subject is valued at \$25.14 per square foot compared to a range developed from the sales of from \$19.84 per square foot to \$45.85 per square foot. Those on the higher end per square foot are much smaller in size.

Mr. Lennington stated that construction of most properties for this use are frame construction and metal sided buildings on less attractive sites. He characterized the subject as possibly "over built" based on the concrete block construction. The subject property is located on a highly traveled, easily accessible roadway.

The three approaches to determining value were

considered by the DOR. The value indication used by the DOR was determined using the cost approach to value and allows 26% depreciation. There is no further allowance for the maintenance items described as necessary by Mr. Wohl. The value indication from the income approach model used for this use type is higher at \$498,320, so they deferred to the cost approach. The confidence that the DOR had in the income approach was not high because of the relatively low rate of return to their office of income and expense data questionnaires that were sent to the owners of these businesses. The return rate was 25% to 30% at the most, according to Mr. Lennington. He stated that the relatively low indication of expenses determined in the model was another reason for not using the income approach, although he did believe that expenses for this type of property are lower than for other income producing property.

BOARD'S DISCUSSION

This Board has long held that cost of construction is but one indicator of value. Here we have presentations of costs from both parties where a substantial difference exists in those figures. An income approach to value was presented by the DOR but not adopted because of the lack of confidence in the data available for the model development. The indication of value that was arrived at by the DOR attempt at an income

approach was noted as supportive, however, of the value the DOR adopted from the cost approach. The income and expense data provided by the taxpayer is lacking the detail necessary to attempt an appraisal based on the income approach. The taxpayer himself was unable to answer questions about the income and expense history of this property.

Mr. Lennington explained that the DOR also surveyed the sales of mini-warehouse property and he designed exhibit B to show a comparison of those sales reduced to the dollars per square foot of the total sale price divided by the size of the improvements. He chose not to abstract the land value from the sales price, and to compare only the values of the improvements on a per square foot basis. By not doing so it is possible that land locational differences are impacting the overall value per square foot, and he does consider the subject to have a superior location for traffic numbers and accessibility over the others. This property is also considered superior to the others in its construction quality, ie. concrete block compared to wood frame and steel siding.

While the comparison of the sales that may be used by the DOR based on their dates of sale is helpful, there is only one of the sales presented that is near the subject in size: a sale that occurred in 1994 with an improvement size of 16,940 square feet. The fact is that in 1994, at least, that

property sold for \$20.73 per square foot. Those remaining are all sales of significantly smaller developments. A comparison of two of those sales of property with improvements of around 3,200 square feet, one in 1993 at \$31.93 per square foot and a sale in 1996 at \$28.13 per square foot, is not indicative of a rise in per square foot market value but instead indicate a decline. The same indication is found in the sales of those improvements that approximate 4,800 to 5,100 square feet. What other amenities or locational factors might be attributed to these sales is not explained.

The indication from these sales is hardly supportive of the DOR multiplier applied to their costs to recognize the relationship of costs to market identified as the "Economic Condition Factor" (ECF). The cost approach to value on the subject property shows that the costs have been increased by 105% by the application of the ECF. The impact is to essentially negate 5% of the depreciation that has been recognized on the improvements. Since there was no dispute as to the amount of depreciation, the removal of a portion of it because of the ECF application is not justified.

The ECF is a market adjustment factor. The International Association of Assessing Officers (IAAO) states:

Market adjustment factors are often required to adjust values obtained from the cost approach to the

market. These adjustments should be applied by type of property and area based on sales ratio studies or other market analyses. Accurate cost schedules, condition ratings, and depreciation schedules will minimize the need for market adjustment factors. (IAAO, 1990, Property Appraisal and Assessment Administration, pages 311-312)(Emphasis applied)

Land values are not considered, because the factor is only applied to improvements valued by the cost approach.

An ECF for a neighborhood is derived from sales; but there was no evidence or testimony from the DOR to indicate the ECF applied was developed from sales of properties of the same type. Here, in fact, the sales presented would indicate the adjustment is not necessary. It follows, therefore, that the ECF ought to be removed.

It is the opinion of this Board that the appeal be granted in part and denied in part and the decision of the Missoula County Tax Appeal Board be reversed.

CONCLUSIONS OF LAW

1. **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.

(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.

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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 Missoula County by the assessor of that county at the 1997 tax year value at the value calculated for the improvements as determined by the Department of Revenue following the removal of the Economic Condition Factor.

Dated this 14th day of October, 1998.

BY ORDER OF THE
STATE TAX APPEAL BOARD

PATRICK E. McKELVEY, Chairman

(S E A L)

GREGORY A. THORNQUIST, Member

LINDA L. VAUGHEY, 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.