

BEFORE THE STATE TAX APPEAL BOARD
OF THE STATE OF MONTANA

GLEN A. WOHL,)	
)	DOCKET NO.: PT-1997-29
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

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
Lots 5,6,& the E 15' of 7, Block 32
Carline Addn to Missoula,
Missoula County, Montana.

3. For the 1997 tax year, the DOR appraised the subject property at a value of \$166,400 for the improvements.

4. The taxpayer appealed to the Missoula County Tax Appeal Board requesting a reduction in value to \$136,500 for the improvements.

5. The County Board denied the appeal.

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

7. The value of the land was not appealed by the taxpayer.

in the letter concerning the traffic on South Avenue and the difficulty that the tenants potential customers have in getting into the business and back onto the street.

Mr. Wohl testified that the building needs roof repair and presented exhibit 3, a roofing contractors bid to do the necessary repairs.

Mr. Wohl testified in a parallel appeal, PT-1997-28, that he is seeking a reduction in value based upon the fact that the Missoula Transportation Plan Update (Ex 2, PT-1997-28) indicates the street upon which the property fronts will be widened into a street of the entire width of the right away by the year 2000. That action will eliminate any parking for customers of the business located in the subject building.

Mr. Wohl provided a market analysis performed by Mr. Jim Risher, Century 21 Great House Realty, for the subject building.(Ex 2) He emphasized to the Board that this exhibit recognizes the fact that changes may be made to the street. If the changes are made Mr. Risher estimates that, "in this event, your properties could be worth a lot less than they are at this time." (Ex 2) The market analysis estimates a value of "under

project would, therefore, eliminate any parking in front of the building. The building, as it now exists, is not in compliance with current city of Missoula parking requirements. Any potential alterations of the building would necessitate becoming compliant with the parking requirements and landscaping requirements. (Testimony in PT-1997-28)

Mr. Wohl testified that a potential buyer would have to be told of the possibility of a street widening project; therefore the potential market value would be less. It is Mr. Wohl's opinion that the DOR should recognize the impact on the market value based on this information. A potential buyer would consider those possible impacts which would be reflected in the market price.

DOR CONTENTIONS

Mr. Lennington asked the Board to consider the exhibits he presented in the appeal PT-1997-28 concerning the comparison of properties that have sold in the area on South Avenue. (Ex A, PT-1997-28) He stated that buildings which have sold are not reflecting any diminution of value as claimed by the taxpayer. He did not present them as comparable for

whether or not the purchasers were made aware of the potential changes to the street before they bought property. He stated that, if the DOR does not see indications of market value reductions, it does not react to it. If, on the other hand, the street is widened and the market indications show declining values the DOR certainly would adjust values accordingly. He added that Mr. Wohl was the seller of one of the properties located at 2315 South Avenue in 1994.

Mr. Lennington presented the property record card for the subject property indicating how the property has been appraised. (Ex A) That document indicates that the cost approach to value was utilized to arrive at the final value.

The DOR made no presentation of either an income approach to value or a market based approach to value.

BOARD'S DISCUSSION

Taxpayer exhibit #2 is entitled a "Comparative Market Analysis" and may be adequate for a real estate agent's purpose. This analysis is not an appraisal of the subject property. It compares a compilation of properties that are listed for sale rather than properties deemed to be comparable

changes and states "your properties could be worth a lot less than they are at this time." (emphasis supplied)

The Board notes that taxpayer exhibit #1 refers to not only the traffic problem as cited by Mr. Wohl, but to problems of increased competition in Missoula and illness of the tenant's family member that have had an impact on the affordability of the business continuance. It is apparent that the traffic problem was not the exclusive reason the tenant sought the release from their lease arrangement with Mr. Wohl.

The appeal raises no issues of fact to question the components of the building, errors in the DOR characteristics of the building or of the calculations made by the DOR such as depreciation allowed. The appeal is based on prospective happenings that do not reflect the situation as it exists in the year in question. The estimate provided by the taxpayer of necessary roof repairs actually appears to be a bid to completely provide a new roof, rather than make normal repairs to the existing roof.

It is the opinion of this Board that the appeal be denied and the decision of the Missoula County Tax Appeal

of its market value except as otherwise provided.

2. 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)). This Board finds that the evidence presented by the Department of Revenue did support the values assessed. This Board further finds that the taxpayer has not provided evidence that the DOR appraised values are not fair market values.

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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 of \$166,400 for the

(S E A L)

PATRICK E. MCKELVEY, Chairman

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.