

BEFORE THE STATE TAX APPEAL BOARD

OF THE STATE OF MONTANA

GLEN A. WOHL,)	
)	DOCKET NO.: PT-1997-28
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

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 17 through 20, Block 40
Carline Addn to Missoula,
Missoula County, Montana.

3. For the 1997 tax year, the DOR appraised the subject property at a value of \$226,000 for the improvements.

4. The taxpayer appealed to the Missoula County Tax Appeal Board requesting a reduction in value to \$198,000 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.

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 1) 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 1) The market analysis estimates a value of "under \$250,000" and is dated December 11, 1997.

The property currently does have alley access and some parking is provided by that access. The buildings are built to within five or eight feet of South Avenue, and cars parking in the front of the building are actually on the right of way for the street. The proposed 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

Board with specific building rental information.

The taxpayer stated that occupants of the building have informed him of the need to relocate because of customers being required to back out onto South Avenue. An auto glass business recently vacated the space it occupied. Current renters of the building include a pizza establishment that mainly is a home delivery operation.

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 these possible impacts which would be reflected in the market price.

DOR CONTENTIONS

Mr. Lennington presented a comparison of properties that have sold in the area on South Avenue. (Ex A) 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 valuation purposes but instead

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 B) 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 #1 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 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.

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

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. 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

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 \$226,000 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.