

BEFORE THE STATE TAX APPEAL BOARD
OF THE STATE OF MONTANA

M SQUARED, INC.,)
Appellant,) DOCKET NO. PT-2006-1
- vs -)
THE DEPARTMENT OF REVENUE) FACTUAL BACKGROUND,
OF THE STATE OF MONTANA) CONCLUSIONS OF LAW,
Respondent) ORDER AND OPPORTUNITY
) FOR JUDICIAL REVIEW
)

The above-entitled appeal was heard on November 8, 2006, in Great Falls, Montana, in accordance with an order of the State Tax Appeal Board of the State of Montana (Board). The notice of the hearing was duly given as required by law. The Appellant (Taxpayer) presented evidence and testimony in support of the appeal and was represented by John F. Mealey, President; Wallace H. Meissner, Vice-President; and Ann Mealey, Secretary/Treasurer. The Department of Revenue (DOR) presented evidence and testimony in opposition to the appeal and was represented by Marlyann Verploegen and Joan Vining, Area Managers.

The duty of this Board is to determine the appropriate market value for the property based on a preponderance of the evidence. Testimony was taken from both the Taxpayer and the DOR, and exhibits from both parties were received. The Board

allowed the record to remain open for a period of time for the purpose of receiving post-hearing submissions from both parties.

The Board upholds the values set by the Department of Revenue.

FINDINGS OF FACT

1. The State Tax Appeal Board has jurisdiction over these issues pursuant to § 15-2-301, MCA.

2. Due, proper, and sufficient notice was given of this matter, of the hearing on the issues, and of the time and place of the hearing. All parties were afforded opportunity to present evidence, oral and documentary.

3. The subject property is a 3.634 acre commercial tract of land with mini-warehouse improvements in the East half of the Northwest quarter of Section 16, Township 20 North, Range 4 East, identified by geocode 02-3016-16-2-01-03-0000 (Assessor's code 0002630900). Exh. A.

4. The DOR's 2006 value for the subject is \$109,020 for the land and \$629,000 for the improvements. Exh. A.

5. The Taxpayer appealed the DOR value to the Cascade County Tax Appeal Board (CTAB) on May 17, 2006, requesting values of \$68,163 for the land and \$440,856 for the improvements. The Taxpayer challenged the cost figures used by DOR to value the improvements and the sales used as comparables

in the sales comparison approach used to value the land. Appeal form and attached letter from Taxpayer dated 5/11/06.

6. On July 20, 2006, the Cascade CTAB disapproved the appeal, saying:

After hearing testimony and reviewing exhibits, the Board finds the values set by the Dept. of Revenue of \$109,020.00 for land and \$629,000.00 for bldgs. to accurately reflect the market value of the property. Appeal Form.

7. The Taxpayer appealed that decision to this Board on July 25, 2006, stating:

The method used to value land was based on sales approach. Residential properties on the river were used to base our land. The value of Buildings was based on cost approach. There are 5 Buildings and the cost is nowhere nere [sic] 125,800 each, as shown by Bank documents. Appeal Form.

8. The Taxpayer purchased the subject property as a vacant lot in 1996. Exh. 4. In the 2003 reappraisal, the land was valued using the computer assisted land pricing model (CALP) for Neighborhood 081-6. This neighborhood is a rural, commercial neighborhood. Although many of the lots used in the CALP are now classified as residential, they were zoned the same as the subject property at the time of the sales and were, therefore, considered comparable. After the reappraisal date, housing was built on some of the lots used in the CALP, thus converting them to residential lots. Verploegen testimony.

9. The Taxpayer objected to the use of residential lots, some of which are on the river, to value their lot which is commercial and had no services (water, utilities, access) in 2003. The Taxpayer also questioned why some rural sales outside the city were not used in valuing their property. Testimony of Ann Mealy. Exh. 1.

10. The base size lot used for the CALP was one acre. The base rate identified through the CALP was \$30,000 and the residual rate was also \$30,000. Exh. C. DOR applied these values to the subject lot and calculated an appraisal of \$109,020 for the land. Exh. A.

11. In 2004, the Taxpayer built on the lot five mini-warehouse buildings finished to be used as storage units. The buildings are slab on grade with a metal frame and a metal skin and roof. The Taxpayer began renting out these buildings as storage units in 2004. Testimony of Ann Mealey.

12. DOR valued the storage unit buildings on a cost basis. The Department recognized that it takes at least three years for such a facility to reach maximum rental and did not believe they had enough income information yet to use the income approach in valuing the buildings. Verploegen testimony.

13. The cost approach DOR used is based on the Marshall-Swift Manual with locational adjustments developed through contacts with contractors, lumber yards, etc. The Marshall-

Swift cost figure for units like the subject, without any locational adjustments, is \$22.80 per square foot. Verploegen testimony. The final appraised value of the units is \$619,100 or \$20.64 per square foot. A fence adds \$9,900 to the total value of the improvements. Exh. A.

14. The Taxpayer believes that the appraised value is too high, particularly the appraised value of the buildings. Testimony of Ann Mealey. The Taxpayer documented that the insurance coverage on these buildings totals \$575,000. This includes coverage for an office building located on an adjoining lot also owned by the Taxpayer. Exh. 2.

15. The Taxpayer attached to the Appeal Form a fee schedule from U.S. Bank that indicates they borrowed \$263,506.19 as a construction loan to build the storage units. Also attached to the Appeal Form is a letter to Ann Mealey from Kevin Eckhardt, Vice President of US Bank, which indicates that M Squared also contributed \$147,834 toward the construction, in addition to the loan amount, for a total of \$411,340.19.

16. A construction company owned and operated by the Mealeys built the storage unit buildings. When asked by DOR if they would build these storage units for an unrelated third party for \$12.86 per square foot, the Taxpayer said yes they would because that is what it cost to build them. Testimony of

John Mealey. The Taxpayer further stated that they built them at a profit. Testimony of Ann Mealey.

17. A fee appraisal on the property was performed before the storage units were constructed. The appraisal was performed for the bank for mortgage purposes. The appraiser used Marshall-Swift and other construction data to develop a cost valuation and calculated the replacement cost new for the storage units at \$22.80 per square foot for a total cost value of \$684,000 for the buildings. Including site improvements and land value, the final cost estimate was \$752,125 (at completion).

The appraiser's sales comparison approach indicated a market price of \$3,800 per storage unit and totaled \$801,800 for the 211 storage units planned at the time of the appraisal. With site improvements and land value, the total estimate of value using the sales comparison approach was \$969,922 (identified by the appraiser as the value at completion with units fully rented, minimal vacancies and typical expenses).

The income approach was based on data from the Taxpayer and other available market data. The appraiser estimated that the facility would only be about 40% rented in its first year, producing an estimated effective gross income of \$53,789 for the income approach. This amount was capitalized at 11% to produce a total estimated value of \$488,990 (at completion - 1st year).

All three approaches were considered and reconciled by the appraiser to reach a final estimate of value. The final estimated market value for the property as of the appraisal date (February 5, 2004) was \$158,122 for the land only, \$490,000 when the buildings were complete, and \$650,000 "as stabilized". Exh. 3.

BOARD DISCUSSION

The State Tax Appeal Board has jurisdiction over this matter pursuant to § 15-2-301, MCA. M Squared, Inc. is the Appellant in this proceeding and therefore has the burden of proof.

As a general rule, the appraisal of the Department of Revenue is presumed to be correct and 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. Farmers Union Cent. Exch. v. Department of Revenue, 272 Mont. 471, 901 P.2d 561, 564 (Mont. 1995); Western Airlines, Inc., v. Michunovich (1967), 149 Mont. 347, 353, 428, P. 2d, 3, 7, *cert. denied* 389 U.S. 952, 19 L. Ed. 2d 363, 88 S. Ct. 336 (1967).

All taxable property must be assessed at 100% of its market value unless otherwise provided. Section 15-8-111(1), MCA. The Department may use a number of different approaches, e.g., market, income, and/or cost approaches, depending on available

data, to appraise a property. Albright v. Montana Department of Revenue, 281 Mont. 196, 933 P.2d 815 (Mont. 1997).

DOR used Computer-Assisted Land Pricing (CALP), a sales comparison approach, to value the Taxpayer's land. The Taxpayer questioned the use of residential lots as a basis for valuing the subject lot, since several of the lots included in the CALP are residential. The Taxpayer also questioned why other lots in the county were not used in valuing their property, offering a newspaper article with information on several lots to illustrate their point (Exh. 1).

It is important to consider the status of the lots included in the CALP as they were on the assessment date, January 1, 2002. At that time, these properties were comparable to the subject property, that is, they were large, vacant parcels then zoned by Cascade County as agricultural. (Verploegen testimony). Since that time, housing has been built on several of those parcels, thus converting them to a residential classification. At the time the CALP was developed, however, these sales were comparable to the subject property.

The Board is not able to draw any conclusions from Exhibit 1, a newspaper article dated July 26, 2006, four and one-half years after the assessment date. The property prices indicated in the Exhibit are estimates, rather than actual sales prices,

and it is not possible to determine the comparability of the lots with the subject property.

DOR used the cost approach to value the storage unit buildings. Because the buildings were new, with little rental history, there was inadequate income information to use as the appraisal basis. Consequently, the cost approach was the most appropriate basis for valuing the subject buildings, according to DOR.

In developing cost information, the Department adjusts the basic information in the Marshall-Swift Manual to reflect local prices for building materials, etc. The Marshall-Swift cost for storage units similar to the subject is \$22.80 per square foot. The final appraised value assigned by DOR for these units is \$20.64 per square foot, demonstrating the local adjustments.

The Taxpayer introduced several other exhibits to support their contention that the value on the subject buildings is substantially too high. Of these exhibits, the fee appraisal (Exh. 3) is most likely to reflect market value. Insurance coverage (Exh. 2) and calculations on which a mortgage is based (Attachment to Appeal Form) do not necessarily reflect true market value.

The fee appraisal fails to account for certain variables relative to market value for the property. The cost approach in the fee appraisal uses the Marshall-Swift basis of \$22.80 per

square foot, a statewide figure, with no adjustments to account for variations in local pricing. Consequently, the cost approach value derived by the fee appraiser is higher than the final DOR value. The fee appraisal value derived by the direct sales approach is substantially higher than the final DOR value (\$969,922 - at full usage - versus \$738,020). There is little information in the appraisal to identify the reliability of the figures used in the income approach and no indication of how the capitalization rate of 11% was selected. Finally, it is not clear how the appraiser reconciled the values derived through the three approaches to reach his final estimated market value. Consequently, the Board is reluctant to rely primarily on Exhibit 3 to refute the DOR appraisal.

The Board finds that the DOR assessment for the subject property is supported by the evidence and the Taxpayer has failed to overcome the presumption that the DOR appraisal is correct.

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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 Cascade County by the local Department of Revenue office at the value of \$109,020 for the land and \$629,000 for the improvements. The decision of the Cascade County Tax Appeal Board is upheld.

Dated this 5th day of January 2007.

BY ORDER OF THE
STATE TAX APPEAL BOARD

(S E A L)

/s/_____
KAREN E. POWELL, Chairwoman

/s/_____
SUE BARTLETT, 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 8th day of January, 2007, 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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