

Issue

The issue before this Board is whether the DOR erred in valuing the building owned by Taxpayers.

Summary

Dwaine Iverson and Charles Turner are the Taxpayers in the case and therefore bear the burden of proof. Based on a preponderance of the evidence, the Board affirms the CTAB determination.

Findings of Fact

1. Due, proper, and sufficient notice was given of this matter, of the hearing, and of the time and place of the hearing. All parties were afforded opportunity to present evidence, oral and documentary.
2. Taxpayers own a commercial office building located at 301 1st Street South in Shelby, Zimmerman First Addition, S27, T32N, R02 W, Block 004, Lot 038, Lts 38-39, which they built in 1982.
3. The DOR valued the land at \$11,867, which is not here in dispute, and the building at \$367,120 using a cost method of valuation.
4. Taxpayers timely filed an AB-26 form on September 4, 2009, requesting an informal review with the DOR claiming “[t]he increase in market value is not reflective of Toole County property. Rents are not able to be raised to the levels of property in larger counties. This value is too high for Toole County.” (Appeal Form and Transcript of Toole County Tax Appeal Board)
5. The DOR rejected the request on October 7, 2009, stating “[b]ased on income generated and lack of vacancy we can make no adjustments at this time.”

6. Taxpayers timely filed an appeal with the Toole County Tax Appeal Board (CTAB) requesting a value of \$270,258 for the building. The reason for appeal was stated as “[c]ost basis approach does not reflect FMV in Toole County. Income approach should use a cap rate of 12% instead of 8.06% used by the DOR. (See attached)” Attached was a copy of the DOR’s cap rate table which Mr. Iverson had obtained pursuant to an email request to the DOR.
7. The Toole CTAB held a hearing on December 2, 2009 at which the Taxpayers requested the DOR use an income approach to value their building and that they use a 12 per cent cap rate instead of the 8.06 per cent the DOR has calculated for those purposes. (Iverson, Test.)
8. Taxpayers argued the higher cap rate, which was justified by the higher risk associated with commercial office space, would produce a market value of \$270,258. (Iverson, Test.)
9. The Toole CTAB concluded, on December 2, 2009, “[a]fter reviewing the testimony and evidence presented at the hearing of A0908 the Board decided that the Department of Revenue’s risk level for property located in this area was too low and the appellant’s was too high. The cap rate was adjusted in order to be fair to both parties by splitting the difference.” A revised value of \$318,689 was entered on the appeal form by the CTAB.
10. The taxpayer appealed that decision to this Board on December 30, 2009, stating:

The Toole County Tax Appeal Board took the easy route and split the difference between the DOR’s assessment and my request. I argued that the cost method is inaccurate for the calculation of the market value of my property and the income approach should be used. Comparable sales method does not work due to lack of sales and inability to separate the value of a business from the value of the property in a sale. Under the income approach in the informal

appeal process the DOR used a CAP rate of 8.06. Before the Toole County Tax Appeal Board, I requested that the rate be 12%. My reasoning was that in the previous valuation cycle the rate was 15 in many of the cases settled in the STAB cases. Interest rates are down a little since then and the risk factor in a small community should be higher than the urban areas. I feel that the CAP rate being used by the DOR is unreasonable for determining value and that my proposed rate of 12% is very reasonable. (Appeal form).

11. At the hearing before this Board, Taxpayers supported their request by pointing out the risk involved in commercial property in Toole County where many buildings are unrented and rents are low, arguing for a 12 percent cap rate. (Iverson, Test.)
12. The DOR presented the Property Record Card (PRC) for the property (DOR Exh. 1) which contained calculations for both income and cost methods. The income method assumes an average rental income based on the square footage of the property, deducts an average of 32.94 percent expenses, and a 22 percent vacancy rate to estimate net income from the property. The net income is divided by the 8.06 percent cap rate to produce a market value of \$402,400. (DOR Exh. 1, p3).
13. The cost method calculated by the DOR (DOR Exh.1, p2) calculated the cost of replacing the building new and then deducted depreciation since 1982. The replacement cost value of the property was calculated as \$367,120.
14. The DOR appraiser chose the lower cost method of valuation because it seemed more in line with values and rentals in the area. (Verploegen, Test.)
15. The DOR established the 8.06 percent cap rate used in calculating the income valuation method by comparing 31 rural commercial property sales with the actual net income reported by the sellers of those properties at the time of the sale. (Halvorson, Test.)

Board Discussion

The State Tax Appeal Board has jurisdiction over this matter under Section 15-2-301 MCA. Section 15-8-111, MCA, requires all taxable property must be assessed at 100% of its market value except as otherwise provided. In challenging the valuation of the DOR, the Taxpayers bear the burden of proof. This Board will accord the appraiser's judgment credibility absent proof to the contrary.

In this case, the Board agrees with the DOR that the cost method was a reasonable method of valuation instead of the higher income valuation. While we acknowledge the income method is commonly used for this type of property, the appraiser's knowledge of the area, the past appraisal of this property done on the cost method, and the knowledge of sales in the area all support the DOR's appraisal judgment as having been carefully made.

The Board also affirms the DOR's use of 8.06 percent cap rate as based on a large selection of actual sales and the net income those properties produced. In contrast, the Taxpayers' argument for a higher cap rate was not based on common experience or evidence. Rather, it is the rate Taxpayers consider a safe rate of return to expect from a commercial investment in uncertain economic times.

As the DOR did not cross appeal the value set by the Toole CTAB, we affirm that value of \$318,689 for the building.

Order

IT IS THEREFORE ORDERED by the State Tax Appeal Board of the State of Montana that the subject improvement value shall be entered on the tax rolls of Toole County at a 2009 tax year value of \$318,689, as determined by the Toole County Tax Appeal Board.

Dated this 25th day of March, 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 25th day of March, 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:

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