

BEFORE THE MONTANA TAX APPEAL BOARD

THE DEPARTMENT OF REVENUE)	DOCKET NO.: PT-2013-25
OF THE STATE OF MONTANA,)	
)	
Appellant,)	
)	FINDINGS OF FACT,
-vs-)	CONCLUSIONS OF LAW,
)	ORDER and OPPORTUNITY
CBA, LLC.)	FOR JUDICIAL REVIEW
)	
Respondent.)	

Statement of Case

The Department of Revenue (DOR) appeals the February 18, 2014 order of the Cascade County Tax Appeal Board (CTAB) placing an improvement value of \$57,500 on the subject property. The subject property is located in the City of Vaughn, Cascade County, Montana. Taxpayer allowed the DOR to conduct an external inspection but denied its request for an internal inspection. Because Taxpayer denied DOR's request for an internal inspection, DOR did not amend the value set for the improvements during the informal AB26 review. On November 6, 2013, the CTAB affirmed DOR's value for the land at \$30,000 and the improvements at \$111,010 because the Taxpayer would not allow the DOR access to his improvements for an internal inspection. This decision was later vacated and a value of \$57,500 was entered

by the CTAB. The DOR appealed from this ruling. On appeal to this Board, Taxpayer did not contest the value assigned for the land, but sought a value for the improvements in the range of \$55,000 to \$60,000.

The Montana Tax Appeal Board (Board) hearing was held on February 5, 2015, in Helena. The Board previously held the appeal in abeyance pending the resolution of *Hickory Swing, LLC., v. Department of Revenue*. DOR was represented by Tax Counsel Teresa Whitney, Region 2 Manager Charles Pankratz and Area Manager Joan Vining, who provided testimony and evidence in support of the appeal. Rick Shannon, who presented testimony and evidence in opposition of the appeal, represented the Taxpayer. Therefore, this Board having fully considered the testimony, exhibits, and all matters presented, finds and concludes the following:

Issue

The issue is whether the DOR determined an appropriate market value for the subject improvements for tax year 2013. The DOR's assessment of the land is not in dispute.

Summary

C.B.A., LLC, the Taxpayer in this proceeding has the burden of proving that the DOR's valuation is in error. Based on a preponderance of the evidence, the Board finds that the DOR's valuation is appropriate.

Findings of Fact

1. Due, proper and sufficient notice was given of this matter and of the time and place of the hearing. The parties had an opportunity to present verbal and documentary evidence.
2. The subject improvements are located upon a 1.5 acre tract with the following legal description:

Lots 1-4, Block 3, of the Braden Tracts Addition to the City of Vaughn, County of Cascade, State of Montana, Assessor Code 0006077350. CTAB Appeal Form.
3. For tax year 2013, the DOR appraised the subject improvements at a value of \$111,010. The land value of \$30,000 is not in contention.

DOR Administrative Hearing Status Questionnaire at 1-2.
4. For tax year 2013, the DOR estimated the improvements as 57 percent complete based solely on the external inspection of the improvements and based on what the DOR appraiser could ascertain without the benefit of an internal inspection. DOR Ex. D
5. Taxpayer filed an AB26 form for property review with the DOR. The Taxpayer denied the DOR's request for an internal inspection. Citing relevant statute, the DOR made no adjustment. DOR Administrative Hearing Status Questionnaire at 1.
6. Taxpayer filed an appeal with the Cascade County Tax Appeal Board (CTAB) on August 27, 2013. The Taxpayer requested a reduction in the

value of the improvements to \$55,000 to \$60,000. The land value was not contested. Appeal Form.

7. The CTAB heard the appeal on November 6, 2013 and upheld the DOR value for the subject property. Appeal Form.
8. At the time of the CTAB hearing, the appointment terms of Chairman Arthur W. Dickhoff and Member Jean Clary had expired and the Cascade County Commission had not appointed new members. Dickhoff and Clary continued to sit on the board. The CTAB heard testimony, accepted evidence, and issued its decision on this appeal and two others it heard that day. *Also see Hickory Swing, LLC., v. Department of Revenue; Russell Lee Voytoski, Jr., v. Department of Revenue.*
9. On December 3, 2013, the attorney for the Taxpayer in the *Hickory Swing* appeal filed a complaint in the Montana Eighth Judicial District, Cascade County, alleging the November 6, 2013 hearings were invalid because Dickhoff and Clary's terms were expired at the time of the hearing. *See Hickory Swing, LLC., v. Department of Revenue.*
10. On February 18, 2014, the CTAB issued a Memo and Order voiding the November 6 hearing and granting all appeals heard that day. DOR Ex. A. The Memo stated that, because their terms had expired and they had not been reappointed to the Board, the CTAB failed to properly hear the three appeals scheduled that day for hearing. *Id.*

Under § 15-15-103(2), MCA, the CTAB treated the matter as never being timely heard by the Board before it went out of session for calendar year 2013. *Id.* Accordingly, all Taxpayer requested values for the three appeals heard on November 6, 2013 were adopted.

11. By order dated October 14, 2014, the District Court issued an order concluding that the Cascade CTAB hearings on November 6, 2013 were considered not to have occurred.
12. The DOR appealed from the Order of February 18, 2014 setting the value of the improvements at \$57,500.
13. That appeal was held in abeyance pending resolution of the issues in *Hickory Swing*. Once that case was resolved, DOR's appeal became active.
14. This Board issued its order, dated November 6, 2014, stating that it would move forward with the DOR appeal in this matter.
15. The February 5, 2015 hearing was held because of this Board's Order.
16. Taxpayer gave the DOR a "[one] time" permission to walk around the steel-framed building. Ex. 3.
17. Taxpayer adduced several pieces of evidence including:
 - His re-creation of DOR's calculations. Ex. 1.
 - His total construction costs of \$69,704, Ex. 2.
 - A statement that he *might* get an independent appraisal. Ex. 3.

- JLC construction cost estimates for the steel frame building totaling \$6985. Ex. 4.
 - Home depot receipts, Ex. 5.
 - Invoices from the Express Employment services detailing \$1,187.85 in laborer costs. Ex. 6.
18. DOR adduced several pieces of evidence including:
- The property record card (DOR Ex. C).
 - Percent complete tables estimating the improvements at 57 percent complete for 2013(DOR Ex. D),
 - Percent complete table with notations denoting that Taxpayer did not grant an interior inspection (DOR Ex. F).
 - July 2, 2013 Letter from DOR to Rick Shannon asking to set up a walk through appointment to determine percent complete. DOR Ex. H.
 - A July 19, 2013 letter from DOR to Rick Shannon asking to set up an appointment to walk through the building to determine percent complete. DOR Ex. I.
 - November 6, 2013 questionnaire asking whether the Taxpayer would grant permission for an internal inspection. DOR Ex. J. In this questionnaire, Taxpayer denies DOR permission to perform an internal inspection.
 - Photographs of the subject property (DOR Ex. K).
 - The subject property deed of trust (DOR Ex. L), among other exhibits.

Principles of Law

1. The Montana Tax Appeal Board has jurisdiction over this matter. (§15-2-301, MCA).
2. All taxable property must be assessed at 100% of its market value except as otherwise provided. (§15-8-111, MCA).
3. 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. (§15-8-111(2) (a), MCA).
4. The appraised value supported by the most defensible valuation information serves as the value for ad valorem tax purposes. (ARM 42.18.110(12).)
5. The state tax appeal board must give an administrative rule full effect unless the board finds a rule arbitrary, capricious, or otherwise unlawful. (§15-2-301(4), MCA.)

Discussion and Conclusions of Law

The Board must determine, based on a preponderance of the evidence, whether the DOR set an appropriate valuation for the subject property for tax year 2013.

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 bears, however, 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 (1995); *Western Airlines, Inc., v. Michunovich*, 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).

The DOR may use different approaches (for example, market, income, and/or cost approaches), depending on available data, to appraise a property. *See, e.g., Albright v. Montana Department of Revenue*, 281 Mont. 196, 933 P.2d 815, (1997).

This case followed a somewhat unusual path before ending up in front of this Board. The DOR appeals here from a valuation that was entered onto the tax rolls by operation of law. The value sought by the Taxpayer was entered because the Taxpayer did not get a valid hearing in the year in which the Taxpayer's appeal of the DOR's appraisal was raised. The Taxpayer did not get a valid hearing because two of the members of the Cascade County Tax Appeal Board were not duly appointed. In a companion proceeding, the Eighth District Court (Cascade County) vacated a County Appeal Board ruling,

which upheld the DOR's appraisal of real property in that case. See Findings of Fact ¶ 9 above. That ruling controlled these proceedings.

Taxpayer contests the value of the improvements. Taxpayer alleges that the improvements are worth between \$55,000 and \$60,000¹ (or \$57,500) and not \$111,010 set by the DOR based on a 57 percent complete estimation. See Findings of Fact ¶ 3-4.

At issue is the value of a steel-framed building erected on the land. Taxpayer's Exhibit 3 suggests that the building is built using sheet metal rather than steel. The Taxpayer alleges that the DOR's value is too high because there has only been partial work done on finishing the interior of the building. He maintains that it is mostly an empty shell, mostly garage and work space. He testified that he envisions that someday he will build a couple of bedrooms and bathroom on the first floor, but that in no event would all of the first floor be residential space. He also envisions finishing the second floor, someday, although the second floor living area would not take up all the space within the exterior walls. The improvements made to date thus represent some percentage of eventual completion of the structure. DOR's Exhibit D is a standard percent complete table that a DOR appraiser prepared for 2013 to estimate that state of completion of the improvements. This table estimates

¹ Findings of Fact ¶ 6 above.

the percent complete of the subject improvements at 57 percent. See also Findings of Fact ¶ 4 above.

Taxpayer allowed the DOR access to the land at least once. See Findings of Fact ¶ 16 above. During this visit the appraiser measured the exterior of the building. Taxpayer never granted the DOR access to the interior of the structure. The DOR began its appraisal process by calculating 1,960 square feet of floor space on both the first and a second floor (based on the external inspection.) DOR designated the total 3,920 square feet as living area and set a value of \$241,125. The appraiser then, as best as she was able, applied the checklist of items on the state of the structure to produce a percent complete table. See also Findings of Fact ¶ 4 above. The appraiser set the percentage of completion at 57 percent. When the 57 percent completion was applied, along with an Economic Cost Factor (ECF) of .93, to the DOR's initial total valuation of the property of \$241,125, the result was the appraised value of \$111,010.

Despite numerous attempts by the DOR requesting permission for an internal inspection, Taxpayer adamantly refused to grant access. Through uncontroverted testimony we find that the DOR's appraiser was unable to gain access to the interior of the building to assess its stage of completion. The Taxpayer did not contest that he had denied the DOR access to the interior of

the building. He maintained that the DOR appraiser could look through the windows of the structure and thus gauge the state of the improvements to the structure. The Taxpayer testified at the hearing before the Board that he did not trust the DOR after the DOR's appraised value was first set. Further, he testified that he was thinking of, or attempting to, obtain the services of an independent appraiser, both for the appeal before the County Board and before this Board.² He failed to do so at any stage in these proceedings. Section 15-7-139(7)(a) and (b) gives the Taxpayer a choice of either allowing an internal inspection or providing an independent appraisal by a certified real estate appraiser to dislodge the DOR's valuation. Taxpayer did neither. He denied the internal inspection and did not obtain an independent appraisal by a certified real estate appraiser. See footnote 2 below.

The Taxpayer presented evidence at the hearing of his total costs to date in constructing improvements on the subject property. As best as he was able to reconstitute his construction costs, they totaled \$69,704. See Findings of

² Section 15-7-139(7) states: "A county tax appeal board and the state tax appeal board may not adjust the estimated value of the real or personal property determined under subsection (6) unless the landowner or the landowner's agent:(a) gives permission to the department to enter the land to appraise or audit the property; or(b) provides to the department and files with the county tax appeal board or the state tax appeal board an appraisal of the property conducted by an appraiser who is certified by the Montana board of real estate appraisers. The appraisal must be conducted in accordance with current uniform standards of professional appraisal practice established for certified real estate appraisers under 37-54-403. The appraisal must be conducted within 1 year of the reappraisal base year provided for in 15-7-103(6) and must establish a separate market value for each improvement and the land." Mont. Code Ann. § 15-7-139.

Fact ¶ 17. He believes this figure more accurately reflects the value of the improvements.

The DOR maintained at the hearing before this Board that the Taxpayer's documentation of construction costs was incomplete and unverified and that the costs by themselves do not set fair market value. It further maintained that, no matter what the evidence, this Board has no authority to adjust any of the values because of the Taxpayer's refusal to allow DOR personnel access to the subject property to do their job. The Taxpayer contended that he did allow access to the property in that he permitted access to the exterior of the building and had left windows open so that the appraiser could look inside and determine what degree of work was done within the walls of the building. Section 15-7-139(6) provides:

“If a landowner or the landowner's agent prevents a person qualified under subsection (1) from entering land to appraise or audit property or fails or refuses to establish a date and time for entering the land pursuant to subsection (5), the department shall estimate the value of the real and personal property located on the land.”

The Taxpayer has not ever allowed the DOR personnel access to the interior of the building. Although at the hearing, he stated that he was amenable to allowing an internal inspection now.

The Taxpayer produced a number of photographs of both the exterior and interior of the structure that he had introduced at the County Tax Appeal Board hearing. He alleges that the photographs accurately depict the state of completion of the interior of the structure and on that basis, as well as his proffered evidence of construction costs, asked this Board to adopt his valuation.

We start from the agreed upon premise that this structure is not complete. The question then becomes how complete is it? More relevantly, what evidence, in the record, legally supports or defeats the valuation eventually reached by the DOR? In this case, we are unable to find error or any arbitrary or capricious action by the DOR that would defeat its calculation of percent completion. Even if the Board were to rely upon the Taxpayer's photographs, the most we could fairly conclude is that they depict partial completion. Even if we were to conclude that the photographs show that some space on the first floor is used for a work area and there is some space on the second floor that is unfinished, the next questions follow: how much space is devoted to the garage or work area? How much space is residential? How much of the second floor is unfinished? These questions beg for an internal inspection. Such a future inspection with full access, as well as documented construction costs, might well support the Taxpayer's contentions and cause the DOR to re-

evaluate its findings in the next appraisal cycle. Section 15-7-139 is clear. It behooves the Taxpayer to either allow an internal inspection or provide a certified appraisal of the subject improvements.

Based on the record this Board will not venture to make its own estimates of the degree of completion of the improvements or will not make any adjustments on the values reached by the DOR.

Conclusion

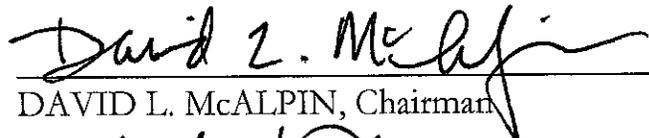
On the evidence presented, we conclude that the DOR's actions were entirely reasonable and legal. The Taxpayer cannot prevent the DOR from doing its job and then complain that the job done was inaccurate. The Taxpayer's suggestion that DOR personnel could peer inside open windows and then act from that scanty knowledge might well be described as being the definition of an arbitrary and capricious action. The Taxpayer has not met his burden of persuading this Board that the DOR's actions, findings or calculations were in error. The DOR has met its burden of proving the validity of the valuation of the subject property.

Order

IT IS THEREFORE ORDERED by the Montana Tax Appeal Board that the subject improvements value shall be entered on the tax rolls of Cascade County at a value of \$111,010, together with a land value of \$30,000, for a total value of \$141,010 for the 2013 tax year.

Dated this 27th of March 2015.

BY ORDER OF THE
MONTANA TAX APPEAL BOARD

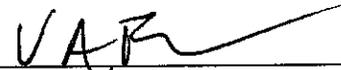


DAVID L. McALPIN, Chairman

(SEAL)



STEPHEN A. DOHERTY, Member



VALERIE A. BALUKAS, 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 27th day of March

2015, 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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 Hand Delivered
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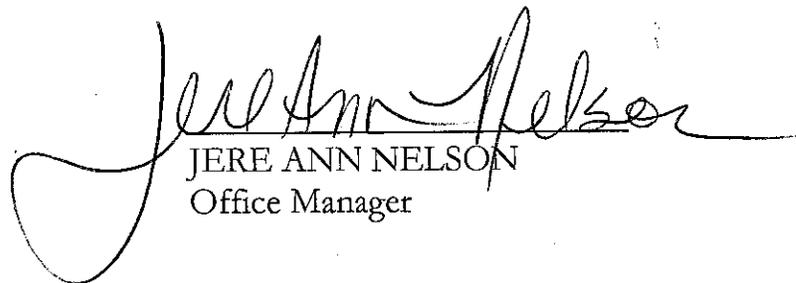
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