

Before The Montana Tax Appeal Board

FILED

AUG 13 2021

Montana Tax Appeal Board

COLSTRIP PROPERTIES, INC.,

Appellant,

v.

**STATE OF MONTANA,
DEPARTMENT OF REVENUE,**

Respondent.

CASE №: PT-2021-5
5 Cactus Drive

**FINDINGS OF FACT,
CONCLUSIONS OF LAW, ORDER,
AND OPPORTUNITY FOR
JUDICIAL REVIEW**

STATEMENT OF THE CASE

This is an appeal by Colstrip Properties Inc., represented by Richard S. Burnett (Taxpayer) of a decision by the Rosebud County Tax Appeal Board (RCTAB), which upheld the Department of Revenue's (DOR) appraised value of an 8-unit residential rental apartment building located in Colstrip. We deny the Taxpayer's appeal and affirm the RCTAB decision.

ISSUE TO BE DECIDED

Whether the Rosebud County Tax Appeal Board erred in affirming the DOR appraised value of \$196,200 for this property.¹

PROPERTY DESCRIPTION

The physical address of this property is 5 Cactus Drive, Colstrip. The property Geocode is 29-1151-34-3-10-01-0000 and the Legal description is Colstrip, S34, T02 N, R41 E, Block 048, Lot 001, Colstrip 49. The assessment code is 001327 and the property is in DOR neighborhood 229.210A. The subject improvements are one 8-unit residential rental building built in 1976.

¹ RCTAB heard both PT-2021-4 and PT-2021-5 in conjunction and found a combined value of \$583,900 for the two separate properties. The \$196,200 represents the RCTAB decision for PT-2021-5.

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EXHIBIT LIST

The following evidence was submitted at the hearing:

Department of Revenue Exhibits;

- A. Land Model Packet, MDOR bates numbered 000009-000011;
- B. Classification and Appraisal Notice, MDOR bates numbered 000030-31;
- C. CTAB Exhibit A: Property Record Card and appeal documents, MDOR bates numbered 000036-51;
- D. CTAB Decision, MDOR bates numbered 000052-54;
- E. 2019 State B Hotel/Motel Model, MDOR bates numbered 000400.

Colstrip Properties and Richard Burnett Exhibits;

- A-1. 3/9/21 Article by Pete Zimmerman at Daily Montanan;
- B-2. 3/26/14 Buy-Sell Agreement (Land) dated 3/26/14 for vacant land (not subject to this appeal), page 1 of 7;
- C-3. 2/5/21 Casper Star Article;
- D-4. What is Colstrip...part of an article (no reference source);
- E-5. 1/2021 EDF case study article (select pages) - 3pages;
- F-6. Confidential Comparables for 11 Larkspur Drive - 2 pages MDOR 000268;
- G-7. 5/2/2008 Colstrip companies water lawsuit Billings Gazette articles -- 1 page;
- H-8. 2015 MCA 15-8-111 Market Value Standard-exceptions – 1 page;
- K-11. 3/13/20 Four Foundation Underpinning Bids – 4 separate pages;
- L-12. 3/12/13 Coal-fired Power plant article – Quartz 3 pages;
- M-13. TriMedia Envir. article on coal-fired power plants, unknown date – 1 page;
- N-14. 6/26/19 EIA article ‘Today in Energy’ – 2 pages;
- O-15. 4/25/21 Daily Inter Lake article – 1 page;

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P-16. Daily Montanan article approx. date 5/7/21, Colstrip Utilities sue NW Talen - 5 pages;

Q-17. 5/13/21 Email with Krista Hazel – 2 pages;

R-18. 12/5/2019 MTAB Opinion PT-2018-63 related to geocodes 29-1151-34-3-22-01-0000 and 29-1151-34-3-19-01-0000;

S-19. 8/25/2000 MTAB Opinion PT-1999-45, related to the Taxpayer's Mobile Home Park;

T-20. Packet of pictures of parts of the different apartments owned by Taxpayer;

U-21. Pages 11-12 from MTAB Opinion in transcript PT-1999-45;

V-22. Packet of pictures (13) of motel PT-2021-1;

W-00. (No Exhibit labeled W-23);

X-23. 'Not the Future' article from Missoula Current, unknown date – 1 page.

The Montana Tax Appeal Board (MTAB) hearing was conducted in Helena on May 18, 2021 and the following were present:

- a. Richard Burnett; and
- b. Anthony Zammit and Dave Burleigh, DOR Counsel; Liz Franz, DOR Regional Manager, and Maureen Celander, DOR Commercial Appraiser for Billings.

The Board was represented at hearing by Board Members David McAlpin, Amie Zendron, and Fred Thomas. Board Member Thomas subsequently resigned his position and was replaced by Daniel Zolnikov. Board Member Zolnikov has read the case file and listened to the audio recording of the hearing and was therefore designated to participate in the deliberations and decision in the case. Mont. Code Ann. § 2-4-622.

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The record includes all materials submitted to the county tax appeal board, the audio recording of the hearing at the county tax appeal board, and additional exhibits submitted by the parties for the MTAB hearing.

FINDINGS OF FACT

1. To whatever extent the foregoing findings of fact may be construed as conclusions of law, they are incorporated accordingly.
2. The DOR valued the subject property at \$228,000 for the 2017/2018 appraisal cycle. *Dept. Ex. B.* For the 2019/2020 tax cycle, the DOR initially valued the subject property at \$196,200 using a lien date of January 1, 2018. *Id.*
3. Rather than file Form AB-26 to request informal review by the DOR, the Taxpayer appealed to the RCTAB on July 10, 2019. In preparation for the County Tax Appeal Board hearing, DOR appraiser Maureen Celander inspected the property on November 25, 2020. After the inspection and discussion with the Taxpayer's son Jerry Burnett, the rent rating was reduced from three to a two which changed the property's revised assessment value to \$196,200. *Dept Ex. C.*
4. The RCTAB hearing was held on December 2, 2020, in Forsyth. *Dept. Ex. D. MTAB Dkt. 3.* At the hearing, the RCTAB heard the appeals for 4 and 10 Cactus Drive (29-1151-34-3-08-01-0000) and 5 Cactus Drive (29-1151-34-3-10-01-0000) concurrently. At the conclusion of the hearing the evidence and testimony from both the DOR and the Taxpayer's representative Jerry Burnett, the RCTAB upheld the DOR's property value based a "lack of evidence" presented by the taxpayer. *Id.* RCTAB set all three Cactus apartments' value at \$583,900, with 5 Cactus Drive property value remaining at \$196,200. *Id.*

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5. The Taxpayer appealed the county decision to MTAB on January 4, 2021, and the Board held a hearing on May 18, 2021. *MTAB Dkt 1*. At the hearing, the Board and the parties agreed to hear both Cactus 4 and 10 (PT-2021-4) and Cactus 5 (PT-2021-5) together in the interest of time and repetition of arguments. The Taxpayer requested a value of \$50,000 and the DOR requested the Board uphold the value of \$196,200 for 5 Cactus Drive. *MTAB Hrg. Transcr. 122:23-123:7*.
6. This property is one of six properties the Taxpayer concurrently appealed on the general theory of economic obsolescence. The basis of the Taxpayer's arguments in all six cases was the adverse economic effect of the Colstrip power plant pending shutdown. Taxpayer contends the town of Colstrip has a life span of forty-five to fifty years, and a town with an end date means the property's value in the town will also have an end date. *MTAB Hrg. Transcr. 6:17-23*. The Taxpayer contended that, with the clock running on the town, as an entrepreneur and property purchaser, he would not purchase the property. *MTAB Hrg. Transcr. 7:3-5*. When valuing the property, Taxpayer argued the DOR appraisers failed to consider the length of the town's life, the employment at the powerplant and the cost to repair the apartments. *MTAB Hrg. Transcr. 13:21-14:13*. Taxpayer testified he believes the entire plant will close within five years, and unless remediation work is undertaken on a large scale at the power plant, the apartments will be valueless and boarded up in four to five years. *Id.*
7. Taxpayer testified the apartments have considerable damage to the roof, siding, and foundation. *MTAB Hrg. Transcr. 123:21-124:13*. Taxpayer testified some of the apartments in the complex are not worth fixing up because there is no demand in Colstrip, and some of the apartments have been vacant for years. *Id.* He testified the apartments rent for \$300-\$350 depending on the condition of the flooring. *Id.*

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8. The Taxpayer purchased the property in 1999 for \$58,000 per eightplex. *MTAB Hrg. Transcr. 127:14-21.*
9. The DOR introduced the Property Record Card for 5 Cactus drive which showed the appraised value of the property had decreased by \$31,800 from the 2017/2018 tax cycle to the 2019/2020 cycle. *Dept Ex. C.*
10. DOR appraiser Maureen Celander testified that she visited the property on November 25, 2020. As a result of her visit, Ms. Celander revised the property's rent rating from three to two, reducing the property's overall value. *MTAB Hrg. Transcr. 132:2-15.*
11. Ms. Celander relied upon the income approach as the best indication of market value for the properties. *MTAB Hrg. Transcr. 134:23-140:5.* She testified that her decision was because the properties are still producing income, they are still being rented, and they are viable income producing properties. *MTAB Hrg. Transcr 142:18-20.* To value a property using the income approach, the DOR gathers rental data from residential rental property owners around the state and stratifies it by location. *MTAB Hrg. Transcr. 96:3-19.* The information is then applied to the property depending on the unit sizes, and a projected gross income is established. *MTAB Hrg. Transcr. 134:23-140:5.* Any additional income is added, while vacancy and collection losses are subtracted from the projected gross income, giving the properties effective gross income. *Id.* The expenses are deducted from the effective gross income to get the net operating income for the property. *Id.* The net operating expense is then divided by the total capitalization rate of 10.3% to get the property's value. *Id.* Ms. Celander justified using the income approach because the apartments are still producing income. *MTAB Hrg. Transcr. 142:16-20.*

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12. DOR area manager Liz Franz testified that if the Taxpayer had a licensed appraiser conduct an appraisal within six months of the lien date and all the property's characteristics were correct, the DOR would consider it in adjusting the property's value. *MTAB Hrg. Transcr. 150:21-151:21.*

JURISDICTION AND STANDARD OF REVIEW

13. The Montana Tax Appeal Board (Board) is an independent agency not affiliated with the Montana Department of Revenue (DOR). Mont. Const., Art. VIII § 7; Mont. Code Ann. § 15-2-101.

14. The Taxpayers filed a timely appeal of the RCTAB decision to the MTAB. Therefore, this Board maintains jurisdiction to hear and decide this matter. Mont. Code Ann. §15-2-301(1)(b).

15. This Board has discretion to determine an appeal on the record or it may hear further testimony. Mont. Code Ann. §15-2-301(2)(b).

16. This Board may hear appeals de novo. *Department of Revenue v. Burlington N.*, 169 Mont. 202, 545 P.2d 1083 (1975). “A trial de novo means trying the matter anew, the same as if it had not been heard before and as if no decision had been previously rendered.” *McDunn v. Arnold*, 2013 MT 138, 303 P.3d 1279 (2013). As such, this matter will be reviewed without deference to the RCTAB hearing and subsequent decision.

17. The Board’s order is final and binding upon all parties unless changed by judicial review. Mont. Code Ann. § 15-2-301.

CONCLUSIONS OF LAW

18. To whatever extent the following conclusions of law may be construed as findings of fact, they are incorporated accordingly.

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19. "All taxable property must be appraised at 100% of its market value...." Mont. Code Ann. § 15-8-111.
20. Except as otherwise provided in Montana Code Ann. § 15-2-301(2)(c), the Board is not bound by common law and statutory rules of evidence or rules of discovery and may affirm, reverse, or modify any decision in connection with any appeal under Montana Code Ann. § 15-2-301. To the extent Mont. Code Ann. § 15-2-301 conflicts with the Montana Administrative Procedure Act, § 15-2-301 supersedes that act. Mont. Code Ann. § 15-2-301(5).
21. DOR is entitled to a "presumption of correctness if its decisions are pursuant to an administrative rule or regulation, and the rule or regulation is not arbitrary, capricious or otherwise unlawful." *Burlington N. Inc.*, 169 Mont. at 214, 545 P.2d at 1090. However, DOR cannot rely entirely on the presumption in its favor and must show the propriety of their action. *Western Air Lines, Inc. v. Michunovich*, 149 Mont. 347, 353, 428 P.2d 3, 7 (1967).
22. The Taxpayer bears the burden of proving the error of DOR's decision. *Farmers Union Cent. Exch., Inc. v. Dep't of Revenue of State of Mont.*, 272 Mont. 471, 476, 901 P.2d 561, 564 (1995); *Western Air Lines*, 149 Mont. at 353, 428 P.2d at 7.
23. The Legislature intended the Department to utilize several different approaches or combination of approaches, including the income approach, sales comparison approach, and cost less depreciation approach, depending on the market where the appraisals take place, when it assesses property and estimates market value. *Albright v. State By & Through State*, 281 Mont. 196, 208-209, 933 P.2d 815, 823 (1997).

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24. “Assessment formulations’ by [the Montana Tax Appeal Board] should be upheld unless there is a clear showing of an abuse of discretion.” *Peretti v. State, Dep’t of Revenue*, 2016 MT 105, ¶ 15, 383 Mont. 340, 344, 372 P.3d 447, 450 (citing *O’Neill v. Dep’t of Revenue*, 2002 MT 130, ¶ 23, 310 Mont. 148, 155, 49 P.3d 43, 47); see *Northwest Land & Dev. of Montana, Inc. v. State Tax Appeal Bd.*, 203 Mont. 313, 317, 661 P.2d 44, 47 (1983) overruled on other grounds by *DeVoe v. Dep’t of Revenue of State of Mont.*, 263 Mont. 100, 866 P.2d 228 (1993).
25. “The state tax appeal board must consider an independent appraisal provided by the taxpayer if the appraisal meets standards set by the Montana board of real estate appraisers and the appraisal was conducted within 6 months of the valuation date. If the state board does not use the appraisal provided by the taxpayer in conducting the appeal, the state board must provide to the taxpayer the reason for not using the appraisal.” Mont. Code Ann. § 15-2-301(3).
26. The Board “may not amend or repeal any administrative rule of the department,” but may enjoin its application if the Board concludes the rule is “arbitrary, capricious, or otherwise unlawful.” Mont. Code Ann. § 15-2-301.
27. Taxpayer briefly presented on the Cactus apartments during the hearing. His case centered on anecdotal information about how the economy in Colstrip dictates that demand for his one-bedroom apartments is very limited and declining to the point he has made a business decision to only update the apartments when he has a new tenant.
28. He relied on his over-arching arguments that due to the inevitable decline or demise of the coal-fired power plants, the economy of the town of Colstrip where his apartments are

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located has no future. His logical conclusion is that his property should be more aggressively depreciated to a market value of \$50,000 for this eight-plex.

29. The DOR witness explained how the preferred income methodology had in fact accounted for the economic decline, at least in the short-term, by a reduction in the rent rating from three to two. This 2019/2020 revised assessment reduced the value of the eight-plex by \$41,400.
30. The Board does understand the economic obsolescence argument being presented by the Taxpayer as it relates to the demand for apartment rentals in Colstrip. However, the Taxpayer provided the Board with no evidence to show the DOR has either treated his property any differently than other similarly situated taxpayers or has made a mistake by using the income method or by how it applied the income method to appraising the subject property.
31. The burden in tax appeals rests on the Taxpayer to submit evidence and provide credible testimony that proves the DOR has erred. We find that the Taxpayer did not meet this burden. No evidence to prove the vacancy rate was introduced. No fee appraisal was offered. No evidence that the property has been marketed for sale or evidence of comparable low sales was tendered.
32. DOR did physically inspect the property and lower the revised assessment in response to its interview with Jerry Burnett and visual inspection of the property.

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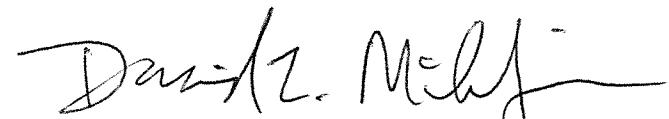
33. We are bound by law to consider the present appraisal cycle based on the lien date of January 1, 2018.

34. We have been offered no proof the DOR failed to appraise the property in accordance with the DOR appraisal manual or Montana rule and law.

ORDER

35. Taxpayer's appeal is denied. RCTAB's decision is affirmed. State of Montana, Department of Revenue is ordered to maintain the value of \$196,200 for 2019/2020.

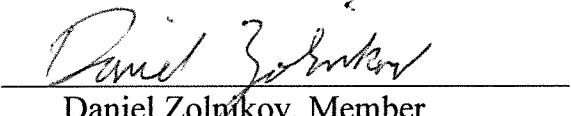
Ordered August 13, 2021



David L. McAlpin, Chairman
MONTANA TAX APPEAL BOARD



Amie Zendron, Member
MONTANA TAX APPEAL BOARD



Daniel Zolnikov, Member
MONTANA TAX APPEAL BOARD

Notice: You may be entitled to judicial review of this Order by filing a petition in district court within 60 days of the service of this Order. Mont. Code Ann. § 15-2-303(2). The Montana Dept. of Revenue shall promptly notify this Board of any judicial review to facilitate the timely transmission of the record to the reviewing court. MCA § 15-2-303(2).

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Certificate of Service

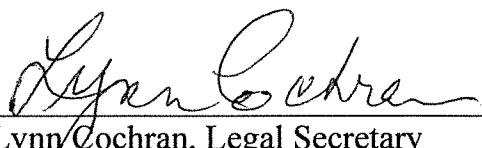
I certify that I caused a true and correct copy of the foregoing Final Decision to be sent by email and by United States Mail via Print & Mail Services Bureau of the State of Montana on MONTH DAY, YEAR to:

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