

BEFORE THE MONTANA TAX APPEAL BOARD

FILED

MAY 22 2018

Montana Tax Appeal Board

CASE No: PT-2017-26

STEPHEN J. GILLESPIE,

Appellants,

v.

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

Respondent.

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

Before the Montana Tax Appeal Board is Appellant Stephen Gillespie's appeal from the Cascade County Tax Appeal Board (CCTAB) decision denying his appeal.

For the reasons provided below, Mr. Gillespie's appeal is denied.

ISSUES TO BE DECIDED

1. Whether the DOR determined the correct market value of Mr. Gillespie's land and improvements.

FINDINGS OF FACT

Description of the Property

2. The land involved in this appeal is described as follows:

Great Falls First Addition, S12, T20 N, R03, E, Block 322, Lot 007, geocode 02-3015-12-1-26-09-0000.

3. The lot is 7,500 square feet. CCTAB Hrg. Transcr. 8:3 – 4. Improvements on the lot are a 4,508 square foot paved parking lot with twenty-four parking spots. MTAB Hrg. 1:01:38 – 1:01:50.

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4. The parking lot is located in a mixed-use area of downtown Great Falls, with businesses next to residential homes. DOR Ex. C. Mr. Gillespie rents 5 parking spaces to Opportunities Inc. for \$75.00 per month. DOR Ex. H. Mr. Gillespie also owns a commercial building, which he leases, close to this parking lot. *Id.*

Assessment Notice

5. On July 3, 2017, the DOR issued its assessment notice to Mr. Gillespie. DOR Ex. B.
6. For the 2017 and 2018 tax years, the DOR valued the property at \$33,150; i.e. \$25,500 for the land and \$7,650 for the pavement. *Id.*

CCTAB hearing – appeal and outcome

7. On July 31, 2017, Mr. Gillespie appealed the DOR's assessed value to the CCTAB.
8. The CCTAB heard his appeal on October 26, 2017.
9. Mr. Gillespie stated he wanted the property valued at \$25,000. According to Mr. Gillespie, \$25,000 was the value of the land with no improvements. CCTAB Hrg. Transcr. 4:2 – 5. Mr. Gillespie argued the pavement represented an encumbrance and not an improvement. *Id.*
10. After hearing all of the evidence, the CCTAB denied Mr. Gillespie's appeal and confirmed the DOR's value of \$33,150.

MTAB hearing

11. Mr. Gillespie appealed to this Board on November 29, 2017. Mr. Gillespie contended the CCTAB erred because the parking lot is coded as a Class 4 - Residential Property, so the pavement constitutes a hinderance to its residential use. Mr. Gillespie asserted the property had a market value of \$1,500 because it would cost \$24,000 to remove

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- the asphalt from the property so it could be used for its intended residential use.
12. Sometime after the CCTAB hearing and before the MTAB hearing, the DOR conducted a site visit and remeasured the parking lot. The DOR then reduced the square footage of the asphalt from 7,500 square feet to 4,805 square feet and increased the amount of depreciation to the maximum amount of depreciation by adjusting from 51 percent good to 21 percent good. With these changes, the DOR adjusted the value of Mr. Gillespie's property from \$33,150 to \$27,550: \$25,500 for the land and \$2,050 for the improvements. DOR Ex. F.
 13. On March 9, 2018, this Board conducted a hearing at the Montana Tax Appeal Board office located at 600 North Park Avenue, Helena.
 14. Mr. Gillespie represented himself and was the only witness in his case.
 15. This Board admitted the following exhibits submitted by Mr. Gillespie:
 - a. Taxpayer Ex. 1: Spreadsheet showing a lack of income derived from the property;
 - b. Taxpayer Ex. 2: Cost to remove asphalt in the parking lot;
 - c. Taxpayer Ex. 3: A portion of a Property Record Card for Mr. Gillespie's property; and
 - d. Taxpayer Ex. 4: Portion of the Great Falls Code of Ordinances.
 16. At the hearing, the DOR was represented by Nicholas Gochis. The following witness testified in the DOR's case:
 - a. Joan Vining, DOR Property Assessment Division area manager; and
 - b. Brenda Ivers, DOR Property Assessment Division appraiser.
 17. This Board admitted the following exhibits submitted by the DOR:

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- a. DOR Ex. A: 2017 Property Record Card;
 - b. DOR Ex. B: Classification and Appraisal Notice;
 - c. DOR Ex. C: Map of Subject Property;
 - d. DOR Ex. D: Land Model Sales Information;
 - e. DOR Ex. E: Original Cost Calculations;
 - f. DOR Ex. F: Revised 2017 Property Record Card;
 - g. DOR Ex. G: Revised Cost Calculations;
 - h. DOR Ex. H: Parking Space Lease Agreement; and
 - i. DOR Ex. I: Commercial General Liability Insurance Summary.
18. The parties' testimony focused on three issues: (1) the value of Mr. Gillespie's land; (2) the value of Mr. Gillespie's improvements; and (3) which appraisal method should be used to value Mr. Gillespie's land and improvements. Interwoven with these issues was the overarching arguments by Mr. Gillespie about his property's class code.
19. As to the above issues, Mr. Gillespie asserted his property should be valued somewhere between \$2,000 and approximately negative \$8,000. MTAB Hrg. 20:51 – 22:30.

Commercial property versus residential property

20. The DOR testified that in 2005, Great Falls passed new zoning ordinances. These ordinances included a grandfather clause, wherein because Mr. Gillespie's property was zoned as commercial prior to 2005, it would remain commercial even if he sold the property. MTAB Hrg. 1:15:02 – 1:15:25. The DOR testified that it has no role in how a city zones an area, but under statute – i.e. MCA 15-7-103(2) – it must classify and code a property based on its use. *Id.*
21. Despite the law, in 2015 Mr. Gillespie asked the DOR to classify his property as Class 4 – Residential Property instead of as Class 4 – Commercial Property. MTAB Hrg. 55:20 – 55:32. The DOR granted Mr.

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Gillespie's request, even though the property has a conspicuous commercial use. *Id.*; Taxpayer Ex. 3.

22. By being coded as residential property, Mr. Gillespie's property receives a lower tax rate and a lower appraised value than it would receive if coded commercial. MTAB Hrg. 56:30 – 59:24. The DOR testified that for commercial property like Mr. Gillespie's, the land has a primary value of approximately \$6.00 per square foot, a residual land value of \$4.00 and a property tax rate of 1.85 percent. *Id.* In contrast, residential property like Mr. Gillespie's, the land has a primary value of approximately \$3.50 per square foot, a residual land value of \$2.50 per square foot, and a property tax rate of 1.35 percent. *Id.*; DOR Ex. D.

Market value of Mr. Gillespie's land

23. The DOR valued Mr. Gillespie's land using computer assisted land pricing (CALP) model for residential land sales. DOR Ex. D. This CALP model consists of property sales from Mr. Gillespie's neighborhood. The improvements are removed from these sales; thus, isolating the value of the land. DOR Ex. D; MTAB Hrg. 1:35:20 – 1:35:59. These land sales are adjusted and then averaged to determine the land value of the subject property. *Id.* The DOR's CALP model, which included nineteen 7,500 square foot residential lot sales, determined Mr. Gillespie's land had a value of \$25,500. DOR Ex. F.
24. Mr. Gillespie objected to the land model used by the DOR, asserting the land sales should consist of land with pavement or parking lots. MTAB Hrg. 1:27:00 – 1:27:40; 2:21:00 – 2:21:22.

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Market value of Gillespie's improvements

25. The DOR stated that prior to this hearing it re-inspected Mr. Gillespie's property. During this inspection, the DOR determined its prior valuation was wrong because it had mis-measured the size of the paved portion of his lot. The DOR determined the pavement was only 4,508 square feet. MTAB Hrg. 47:54 – 54:42.
26. The DOR also found the pavement's condition warranted the maximum amount of depreciation and was only 21 percent good. *Id.*; DOR Ex. G.
27. Using this information, the DOR first found Mr. Gillespie's pavement had a replacement cost new of \$12,067. DOR Ex. G. The DOR then adjusted for economic condition factor, grade, depreciation, and local cost factor to reach a value of \$2,050. *Id.*
28. Because the property is residential, Mr. Gillespie argued the parking lot should be considered a hinderance to the property's residential use. MTAB Hrg. 12:50 – 13:39; 19:50 – 20:54. According to Mr. Gillespie, the DOR's value should be reduced by the cost to remove the 4,508 square foot parking lot. Mr. Gillespie provided an invoice showing it would cost \$33,900 to remove a 7,500 square foot pavement parking lot. *Id.*; Taxpayer Ex. 2. Using this proposal, a 4,508 square foot parking lot would cost approximately \$20,376.16 to remove. Taxpayer Ex. 2.

Income approach versus the cost approach to value the improvements

29. In the alternative, despite his property being residential, Mr. Gillespie asserted his property's improvements were commercial and thus the DOR should value the improvements using the income approach. 2:27:26 – 2:27:34. He presented an income approach which suggested

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the parking lot generates a net annual income of minus \$135.48.
Taxpayer Ex. 1.

30. The DOR testified Mr. Gillespie's income approach was flawed because it did not include a cap rate based on property sales and wrongly removed property taxes. MTAB Hrg. 1:12:19 – 1:13:12. His approach, therefore, did not meet the requirements outlined in ARM 42.20.107. MTAB Hrg. 1:51:53 – 1:53:47.
31. Regarding Mr. Gillespie's request for the DOR to use the income approach, the DOR testified it did not use the income approach because the DOR lacked sufficient income information to generate an income model for parking lots. MTAB Hrg. 1:10:30 – 1:11:03; 1:13:35 – 1:14:10; 2:02:40 – 2:03:59.
32. To whatever extent the following conclusions of law may be construed as findings of fact, they are incorporated accordingly.

CONCLUSIONS OF LAW

33. To whatever extent the foregoing findings of fact may be construed as conclusions of law, they are incorporated accordingly.
34. Mr. Gillespie timely appealed the CCTAB's decision to this Board.
Therefore, this Board has jurisdiction to hear and decide this matter.
See Mont. Code Ann. § 15-2-301(1)(b).
35. "In connection with any appeal under [Mont. Code Ann. § 15-2-301], the state board is not bound by common law and statutory rules of evidence or rules of discovery and may affirm, reverse, or modify any decision.
To the extent that this section is in conflict with the Montana Administrative Procedure Act, this section supersedes that act." Mont. Code Ann. § 15-2-301(5).

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Burden of Proof

36. “As a general rule, . . . the appraisal of the DOR is presumed to be correct and the taxpayer must overcome this presumption. The Department of Revenue should, on the other hand, bear a burden of providing documented evidence to support its assessed values.”
Workman v. The Department of Revenue of the State of Montana, 1997 WL 37203, *1 (Mont.Tax.App.Bd.), *citing Western Airlines, Inc. v. Catherine J. Michunovich, et al*, 149 Mont. 347, 428 P.2d 3, (1967).
37. The appraised value supported by the most defensible valuation information serves as the value for ad valorem tax purposes. Mont. Admin. Reg. 42.18.134, formerly Mont. Admin. Reg. 42.18.110(12); *Rainbow Senior Living of Great Falls v. Montana Department of Revenue*, 2013 WL 6062167 (Mont.Tax.App.Bd.); *Keck v. Montana Department of Revenue*, 2013 WL 2476838 (Mont.Tax.App.Bd.).
38. The taxpayer has the burden to show the DOR’s appraisal should be reduced. Mont. Code Ann. § 26-1-401; *Baitis v. Department of Revenue of the State of Montana*, 2004 MT 17, ¶28, 319 Mont. 292, 302, 83 P.3d 1278, 1284.

Market Value

39. The DOR must value land and improvements. MCA §§ 15-7-101 – 103.
40. Land must be classified based on its use. MCA § 15-7-103(2).
41. “All taxable property must be assessed at 100 percent of its market value except as otherwise provided.” MCA § 15-8-111(1).
42. “Market value is the value at which property would change hands between a willing buyer and a willing seller, neither being under any

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compulsion to buy or to sell and both having reasonable knowledge of relevant facts.” MCA § 15-8-111(2)(a).

43. This Board, upon hearing a tax appeal, may increase or decrease a property value to ensure the property is “assessed at 100 percent of its market value.” *See Puget Sound Energy Inc. v. State Dept. of Revenue*, 2011 MT 141, 255 P.3d 171; and *O’Neill v. Department of Revenue*, 2002 MT 130, 49 P.3d 43.
44. Under Montana law, the DOR can use a combination of approaches – i.e. the market data approach, the income approach, and the cost approach – to value a property. *Albright v. State*, 281 Mont. 196, 208 - 209 (Mont. 1997). The DOR does not have to use only one approach when it “appraises property and estimates market value.” *Id.* at 208.
45. The Montana Supreme Court in *Albright* concluded:

We recognize that the Department’s method of assessing property and estimating market values is by no means perfect, and will occasionally miss the mark when it comes to the Constitution’s goal of equalizing property valuation. However, perfection in this field is, for all practical purposes, unattainable due to the logical and historical preference for a market-based method, and the occasional lack of market data. Nonetheless, we conclude that the Department’s interdisciplinary method – which utilizes the market data approach, the income approach, the cost approach, or some combination of those approaches – is a reasonable attempt to equalize appraisal of real property throughout the State and that it comports with the most modern and accurate appraisal practices available. *Id.* at 213.

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46. First, this Board notes Mr. Gillespie asked the DOR to classify his property as Class 4 – Residential Property. This fact colors this entire appeal. Ignoring this fact, the property is an income producing property. With this change, Mr. Gillespie receives a significant tax benefit by his property being valued as residential property. Mr. Gillespie argued because his property is residential, the improvements are a hinderance to his residential lot. This argument suggests Mr. Gillespie wants his property classified as Class 4 – Commercial Property and thus his property valued at \$6 per square foot with a residual value of \$4 per square foot; instead of approximately \$3 per square foot as it is presently valued. Such a change would almost double the value of Mr. Gillespie’s property. Because changing the property’s class code was not directly before this Board, this Board will maintain the current class code, even though the benefit Mr. Gillespie receives conflicts with MCA § 15-7-103(2) given the property is being used for a commercial purpose.
47. Second, as noted in *Albright*, the DOR may use the valuation approach that is the most defensible, whether it is the cost approach, the market sales approach, and/or the income approach. Mr. Gillespie asserts the DOR should have used the income approach. However, the DOR was not required to use one specific approach. The DOR provided credible testimony that it lacked sufficient information to generate an income approach model for parking lots to use the income approach to value Mr. Gillespie’s property. This Board, therefore, disagrees with Mr. Gillespie and does not find the DOR was required to value his residential property using the income approach.

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48. Third, the DOR provided sufficient evidence supporting the value of Mr. Gillespie's land. The DOR provided its CALP for its land value. The DOR's CALP consisted of sales where the improvements have been removed to isolate the actual lot land values. The DOR's CALP contained nineteen 7,500 square foot lots similar to Mr. Gillespie's lot. The DOR's CALP determined Mr. Gillespie's land had a value of \$25,500. At the hearing, Mr. Gillespie argued the DOR's CALP should consist of paved lots only. Mr. Gillespie's argument reveals confusion about the DOR's CALP and ignores that the DOR removes improvements from its sales before generating a value for his land. This Board finds Mr. Gillespie failed to meet his burden showing the DOR wrongly valued his land.
49. Lastly, Mr. Gillespie's land has improvements: a paved parking lot. The Board finds the DOR properly valued Mr. Gillespie's improvements. First, the parking lot constitutes an improvement which the DOR must value pursuant to MCA §§ 15-7-101 – 103. Second, as to the value of the improvements, the DOR considered the condition of the parking lot and gave the maximum depreciation possible in finding the improvements had a value of \$2,050. This Board received an exhibit showing portions of Mr. Gillespie's parking lot is rented. This indicates Mr. Gillespie's improvements can still be used for their intended purpose. Mr. Gillespie presented two arguments regarding the market value of his property's paved lot. First, he argued, because the lot is residential, the parking lot is a hinderance to its residential use and has a negative value. However, as noted above, Mr. Gillespie's request ignores the fact that he requested his property

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be classified Class 4 – Residential Property and that he derives significant benefits from his requested change. The remedy to Mr. Gillespie’s argument would be to class code the property as commercial given its commercial use; which would result in significant value increases to Mr. Gillespie’s property. Second, Mr. Gillespie argued the DOR should use the income approach to value his commercial improvements. Mr. Gillespie provided his proposed income approach which consisted of just his parking lot’s income information and nothing else. His income approach did not include a capitalization rate. It wrongly included property taxes. It did not include rents and sales of other income producing properties like his parking lot. Given the inconsistent logic of Mr. Gillespie’s two arguments, this Board finds he failed to meet his burden of proof to show the DOR improperly valued his property’s improvements.

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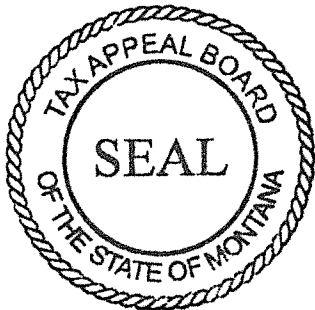
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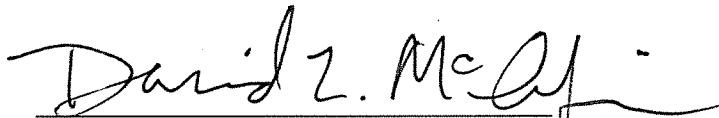
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ORDER


1. Mr. Gillespie's appeal is denied.
2. For the 2017 and 2018 tax years, this Board affirms the DOR's revised values for Mr. Gillespie's property, identified by geocode 02-2895-26-1-03-38-0000 as follows:
 - a. The land has a value of \$25,500; and
 - b. The improvements have a value of \$2,050.
 - c. For a total value of \$27,550.

Ordered May 22nd, 2018.




David L. McAlpin, Chairman
MONTANA TAX APPEAL
BOARD


Stephen A. Doherty, Member
MONTANA TAX APPEAL
BOARD


Valerie A. Balukas, 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).

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Certificate of Service

I certify that I caused a true and correct copy of the foregoing *Findings of Fact, Conclusions of Law, Order, and Opportunity for Judicial Review* to be sent by United States Mail via Print and Mail Services Bureau of the State of Montana on _____, 2018 to:

Stephen J. Gillespie
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MONTANA TAX APPEAL BOARD

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