

AUG 11 2022

Montana Tax Appeal Board

CASE No: PT-2022-6

MARC MANLY,

Appellant,

v.

STATE OF MONTANA,
DEPARTMENT OF REVENUE,

Respondent.

**STATEMENT OF UNDISPUTED
FACTS, CONCLUSIONS OF LAW,
ORDER, AND OPPORTUNITY FOR
JUDICIAL REVIEW**

STATEMENT OF THE CASE

This is an appeal of a final decision by the Gallatin County Tax Appeal Board (CTAB) denying Mark Manly’s (Taxpayer) application for reduction in value on his property located in Belgrade, Montana, and affirming the Department of Revenue’s (DOR) improvement valuation for the 2021-2022 tax cycle. The Taxpayer timely appealed that outcome to Montana Tax Appeal Board (MTAB) on January 19, 2022. The Taxpayer has filed a Motion for Summary Judgment. As reflected in the following decision and order, the Taxpayer’s Motion for Summary Judgment is denied. Per the Taxpayer’s request, and without objection from the DOR, this matter was decided on the record. The CTAB’s decision upholding the DOR’s valuation of the subject property for the 2021/2022 valuation cycle is affirmed.

ISSUE TO BE DECIDED

Whether the CTAB erred in affirming the DOR’s appraised improvement value of \$21,310 for this property.

EXHIBIT LIST

The following evidence was submitted at the CTAB hearing:

Taxpayer Exhibits:

1. AB-26 Determination Letter
2. Mont. Code Ann. § 15-8-111
3. CTAB Decision

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4. Car Park Condos C, D, E, Agreement for Removal of Property 3/18/14
5. Acceptance of Sublease 3/28/14
6. Closing Statement on Unit E-1 4/20/14
7. Chart Contrasting Proposed Assessed Values
8. Computation of Annual Economic Value of Sales of Units in Bld. F

DOR Exhibits:

- A. MDOR Assessment Information Packet
- B. MLS Listing for Gallatin Field Garages
- C. AB-26 Determination Letter with Condo Sales Information (Filed Under Seal)
- D. Declaration for Car Park Condos C, D, E with Lease Agreement Attached
- E. Amendment No. 1 to the Condominium Declaration and Bylaws for Car Park Condos C, D, E
- F. Amendment No. 3 to the Declaration for Car Park Condos C, D, E Document No. 2405659
- G. Car Park Condos Building E Measurements
- H. Montana Appraisal Documents
- I. Standard 6: Mass Appraisal, Development, and Reporting
- J. CTAB Appeal Form
- K. CTAB Decision

PROCEDURAL HISTORY

The DOR valued the subject property at \$21,310 for the 2021/2022 appraisal cycle. *Ex. A, at 90.* A decision was rendered by the DOR on the Taxpayer's AB-26 request for an informal classification and appraisal review on September 28, 2021, affirming the DOR's valuation. *Ex. 1, at 1.* The Taxpayer appealed the DOR's valuation to the CTAB on October 28, 2021, requesting a value of \$11,000. *Ex. J.* A hearing was held on December 22, 2021. The CTAB's decision denying the Taxpayer's application for reduction was sent to the parties on December 22, 2021. *Ex. K.* The Taxpayer appealed to the Montana Tax Appeal Board (MTAB) on January 19, 2022, per Mont. Code Ann § 15-2-301. *MTAB Dkt. 1.* The Taxpayer requested,

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and after due consideration the Board granted an “on the record” review per Mont. Code Ann. § 15-2-301(2)(b), in lieu of an in-person hearing. *MTAB Dkt. 4*. The Taxpayer also filed a Motion for Summary Judgment along with a sworn statement on March 28, 2022. *MTAB Dkt. 6*. The DOR responded to the Taxpayer’s Motion May 5, 2022. *MTAB Dkt. 9*. The last filing in the case was the Taxpayer’s reply, which was filed on May 17, 2022. *MTAB Dkt. 12*.

The record includes all materials submitted to CTAB, a recording and transcript of the CTAB hearing, all materials submitted to MTAB with the appeal, and additional exhibits submitted by the parties.

UNDISPUTED FACTS

1. To whatever extent the following statements of fact may be construed as conclusions of law, they are incorporated accordingly.
2. The parties do not dispute the material facts in this matter. The agreed upon facts provided by the parties are set forth herein.
3. The subject property is a car park/storage unit¹ located at the Gallatin Field Airport, Bozeman, Montana, called the Gallatin Field Garages, Unit E-1. *Ex. A, at 90; Ex. B; Appellant’s Mot. Summ. J., Dkt. 6, at 4*. It is located in one of three commercial condominium buildings. *Ex. D, at 137*.
4. There are three of the same type of buildings in the condominium association that are identified as Car Park Condos C, D, and E. *Appellant’s Mot. Summ. J., Dkt. 6, at 4*. Each building consists of 20 garages, 10 on each side of the building, separated by common walls between the units. *Id.* The interior of each garage unit is approximately 275 to 278 square feet. *Appellant’s Mot. Summ. J., Dkt. 6, at 4-5*. The subject property is Unit E-1 which is 276 square feet. *Appellant’s Mot. Summ. J., Dkt. 6, at 5; Ex. A, at 90; Ex. F, at 175*.

¹ Also referred to as a car park/garage condominium unit.

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5. The subject property is a leasehold estate subject to the Declaration for Car Park Condos C, D, E, dated November 8, 2011 (Declaration). *Ex. D, at 106.*

6. The lease agreement between the Gallatin Airport Authority (Airport Authority), as lessor, and Gallatin Field Garages, LLC and Car Park Condos C, D, E Owners Association (Condominium Association), collectively as lessee, which governs the subject property (Lease Agreement) terminates on December 14, 2026. *Ex. D, at 165; Appellant's Mot. Summ. J., Dkt. 6, at 5.*

7. Additionally, the Lease Agreement does not allow individual unit owners "to rent their units to others or to the public." *Ex. D, at 165; Appellant's Mot. Summ. J., Dkt. 6, at 4.*

8. Upon termination of the Lease Agreement, the Airport Authority shall have the option to:
 - a. Require the removal of all structures and to have the lessee return the site to its condition prior to entering into this Lease Agreement, within ninety (90) days at the lessee's expense; or
 - b. Promptly take title to such structures, installations, and improvements. The lessee shall promptly execute all documents required for the Airport Authority to take title.*Ex. D, at 160; Appellant's Mot. Summ. J., Dkt. 6, at 5.*

9. To pay for the demolition costs that may be incurred at the termination of the lease, the Condominium Association assesses and holds in escrow an annual "Demolition Fee" of \$200 per unit. *Appellant's Mot. Summ. J., Dkt. 6, at 5; Ex. 6.* The Condominium Association may also take a special assessment if the escrow is insufficient. *Appellant's Mot. Summ. J., Dkt. 6, at 5-6; Ex. 4, at 1.*

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10. Although there are no express provisions governing renewal of the Lease Agreement, it does contemplate the possibility of written renewal of the lease prior to its expiration. *Ex. D, at 160; Ex. 4, at 1.*
11. The Taxpayer purchased the property in 2014 for \$19,000. *CTAB Hrg. Tr. 7:16-17; Appellant's Mot. Summ. J., Dkt. 6, at 9.*
12. The Department valued the subject property at \$21,310 as a commercial garage using the actual interior square footage of the unit at 276 square feet. *Ex. A, at 91; Ex. F, at 175; Appellant's Mot. Summ. J., Dkt. 6, at 5.*
13. The Condominium Association amended the Declaration and Bylaws for Car Park Condos C, D, and E and stated that each unit was to have a 1/60th interest in the general common elements of Car Park Condos C, D, and E. *Ex. E, at 167.*
14. A 1/60th interest of Car Park Condos C, D, and E results in each car park owner holding an interest in 302 square feet because the square footage of each building is 6,048 times three buildings equates to 18,144 square feet divided by sixty equals 302.4. *Ex. E, F, and G, at 166-76.*
15. Similar units to the subject property in the car park/storage buildings located at the Gallatin Field Airport have sold between 2016 and 2020. *Ex. C, at 99.*
16. According to the Department's "Montana Residential, Commercial, and Industrial Property Classification and Valuation Manual," the Department is to value commercial and industrial property utilizing the income or cost approach to valuation. *Ex. H, at 193.*

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17. The Department utilized the cost approach to valuation when it valued the subject property for the 2021/2022 valuation cycle. *Ex. A, at 90; Appellant's Mot. Summ. J., Dkt. 6, at 1.*

JURISDICTION AND STANDARD OF REVIEW

18. The Montana Tax Appeal Board is an independent agency not affiliated with the Montana Department of Revenue. *Mont. Const., Art. VIII § 7; Mont. Code Ann. § 15-2-101.* The Taxpayer filed a timely appeal of the DOR's decision to the CTAB, and then timely filed an appeal of the CTAB decision to MTAB. Therefore, this Board maintains jurisdiction to hear and decide this matter. *Mont. Code Ann. § 15-2-301.*
19. Summary judgment shall be granted if the pleadings, discovery, and affidavits show that no genuine issue of material fact exists, and the movant is entitled to judgment as a matter of law. *Mont. Code Ann. § 25-20-56(c)(3).*
20. The Board is authorized to decide matters on summary judgment. *Matter of Peila*, 249 Mont. 277, 280-81, 815 P.2d 139, 144-45 (1990). It determines undisputed facts at summary judgment in the same manner as a district court. “[I]t is inappropriate for a district court to enter ‘findings of fact’ when addressing a summary judgment motion. Rather, the courts simply should set forth the undisputed facts relevant to the legal issues raised, as well as any disputed facts which may preclude entry of summary judgment.” *Wurl v. Polson School Dist. No. 23*, 2006 MT 8, ¶ 11, 330 Mont. 282, 127 P.3d 436.
21. “The moving party has the burden of establishing the absence of a genuine issue of material fact, and entitlement to judgment as a matter of law.” *Smith v. Burlington Northern & Santa Fe Ry.*, 2008 MT 225, ¶ 10, 344 Mont. 278, 187 P.3d 639.

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22. Once the moving party satisfies its burden to establish that no genuine issue of material fact exists, the opposing party must identify a genuine issue of material fact. *Lucas Ranch, Inc. v. Mont. Dep't of Revenue*, 2015 MT 115, ¶ 12, 379 Mont. 28, 347 P.3d 1249 (citing *Lorang v. Fortis Ins. Co.*, 2008 MT 252, ¶ 39, 345 Mont. 12, 192 P.3d 186).
23. To identify a genuine issue of material fact, the opposing party must set forth specific facts and cannot rest upon the allegations or denials of the pleadings. *Lucas Ranch*, ¶ 12; *Mont. Code Ann* § 25-20-56(c)(3). If no issue of material fact exists, the ultimate determination is whether the facts entitle the moving party to judgment as a matter of law. *Id.*
24. 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

25. To whatever extent the following conclusions of law may be construed as statements of fact, they are incorporated accordingly.
26. "The state shall appraise, assess, and equalize the valuation of all property which is to be taxed in the manner provided by law." *Mont. Const. art. VIII, § 3.*
27. "It is the duty of the department of revenue to accomplish the following: (a) the classification of all taxable lands; (b) the appraisal of all taxable city and town lots; (c) the appraisal of all taxable rural and urban improvements." *Mont. Code Ann. § 15-7-101(1).*
28. "All taxable property must be appraised at 100% of its market value..." *Mont. Code Ann. § 15-8-111(1).*

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29. “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 sell and both having reasonable knowledge of relevant facts.” *Mont. Code Ann. § 15-8-111(2)(a)*.

30. “If the department uses the cost approach as one approximation of market value, the department shall fully consider reduction in value caused by depreciation, whether through physical depreciation, functional obsolescence, or economic obsolescence.” *Mont. Code Ann. § 15-8-111(2)(b)*.

31. “The department may not adopt a lower or different standard of value from market value in making the official assessment and appraisal of the value of property, except...for condominium property, the department shall establish the value as provided in subsection (5) ...” *Mont. Code Ann. § 15-8-111(4)(c)(i)*.

32. “If sufficient, relevant information on comparable sales is not available for residential condominium units or if sufficient, relevant information on income is not made available for commercial condominium units, the department shall value condominiums using the cost approach. When using the cost approach, the department shall determine the value of the entire condominium project and allocate a percentage of the total value to each individual unit. The allocation is equal to the percentage of undivided interest in the common elements for the unit as expressed in the declaration made pursuant to 70-23-403, [MCA], regardless of whether the percentage expressed in the declaration conforms to market value.” *Mont. Code Ann. § 15-8-111(5)(c)*.

33. “The preferred approach for the appraisal of commercial condominium units is the income approach where reliable condominium income and expense data are available... When reliable income and expense data are not available, the cost approach must be used. In that instance, the condominium declaration's percentage of ownership interest required by 15-8-511, 70-23-301, and 70-23-

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403, MCA, will be used to allocate the value. Allocation of value for each condominium/townhome unit will be determined by multiplying the percentage, expressed as a decimal, by the appraised value of the entire condominium/townhome project. The common elements are deemed to be inherent in the individual unit's declaration percentage when the cost approach to value is determined and allocated as specified in this subsection." *Mont. Admin. R. 42.20.105(2)(b)*.

34. Except as otherwise provided in Mont. 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 Mont. 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)*.
35. 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." *Dep't of Revenue v. Burlington N.*, 169 Mont. 202, 214, 545 P.2d 1083, 1090 (1976). However, DOR cannot rely entirely on the presumption in its favor and must show the propriety of their action. *Western Air Lines v. Michunovich*, 149 Mont. 347, 353, 428 P.2d 3, 7 (1967).
36. The taxpayer bears the burden of proving the error of DOR's decision. *Farmers Union Cent. Exch. v. Dep't of Revenue*, 272 Mont. 471, 476, 901 P.2d 561, 564 (1995); *Western Air Lines*, 149 Mont. at 353, 428 P.2d at 7.
37. "'Assessment formulations' by [the Montana Tax Appeal Board] should be upheld unless there is a clear showing of an abuse of discretion." *Peretti v. 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,

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49 P.3d 43, 47); see *Northwest Land & Dev. 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*, 263 Mont. 100, 866 P.2d 228 (1993).

38. When construing a statute, it is the Board's role to "determine what in terms or substance is contained in it, and not to insert what has been omitted or to omit what has been inserted." *State v. Minett*, 2014 MT 225, ¶ 12, 376 Mont. 260, 332 P.3d 235; *Mont. Code Ann. § 1-2-101*.
39. "When faced with a problem of statutory construction great deference must be shown to the interpretation given the statute by the officers or agency charged with its administration." *Dep't of Revenue v. Puget Sound Power & Light Co.*, 179 Mont. 255, 262, 587 P.2d 1282, 1286 (1978) (citing *Udall v. Tallman*, 380 U.S. 1, 16 (1965)).
40. "[T]ax statutes are to be strictly construed against the taxing authority and in favor of the taxpayer." *Western Energy Co. v. Dep't of Revenue*, 1999 MT 289, ¶ 10, 297 Mont. 55, 990 P.2d 767.

DISCUSSION

41. This Board agrees with the parties that there are no genuine issues of material fact in dispute. However, this Board was not convinced that the Taxpayer is entitled to judgment as a matter of law. At the Taxpayer's request, and without objection from the DOR, we decided this matter on the record.
42. The Taxpayer makes two main arguments to demonstrate that the DOR incorrectly valued the subject property. First, the Taxpayer argues that DOR failed to consider the economic obsolescence caused by the Lease Agreement. Second, the Taxpayer argues the DOR failed to follow Mont. Code Ann. §15-8-111 in valuing the subject property. The Taxpayer further argues that the DOR's use of comparable sales to support its value was improper. The

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Taxpayer has argued an alternative method to compute the value of the subject property which he believes to be more accurate. For the reasons stated below, this Board disagrees with the Taxpayer and upholds the CTAB's decision confirming the DOR's valuation of the subject property for the 2021/2022 valuation cycle.

Economic Obsolescence

43. First, the Taxpayer argues that the DOR failed to consider the economic obsolescence caused by the Lease Agreement as is required by Mont. Code Ann. § 15-8-111(2)(b). He argues that because the land is leased from the Airport Authority, the market value of the subject property is derived solely from the unit owner's ability to park at the airport for the number of years the Lease Agreement remains in effect. He argues that under MCA § 15-8-111(2)(a), the market value is what a willing buyer would pay for the unit, and because the current Lease Agreement terminates on December 14, 2026, a knowledgeable buyer would not pay \$21,310, the amount at which the DOR valued the subject property, to use the unit until the Lease Agreement terminates. However, the DOR provided evidence of several recent sales of similar car park/condominium garage units that refute the Taxpayer's argument. In fact, two units in the same building as the subject property sold in 2020 for more than the subject property was valued. One sale took place on January 3, 2020, and the other on November 4, 2020. The terms of the Declaration require the Condominium Association's express written approval before any unit may be sold to ensure a subsequent purchaser is fully aware of the leasehold nature of the property. Thus, this Board finds the DOR's evidence, specifically the two 2020 sales in Building E, credible evidence to refute the Taxpayer's argument that a willing buyer, with knowledge of the Lease Agreement termination date, would not pay the amount at which the DOR valued the subject property.

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44. The Taxpayer argues that the value of the unit should be calculated using a method of straight-line depreciation in which he starts with the purchase price of \$19,000 paid on April 2, 2014, divided by the approximate 153 months of use through the Lease Agreement's termination date to arrive at a monthly parking value of approximately \$124 per month or \$1,490 per year. He argues that as each year passes, a buyer would pay less and less for the use of the unit, so the value of the subject property should be reduced by \$1,490 each year until the value becomes \$0 in 2026 when the Lease Agreement terminates. While this may seem like a simple method to calculate the value of the unit, it unfortunately does not take into consideration all market factors that the DOR is required to consider each valuation cycle. Regardless of the method used to value property, economic factors that impact the valuation of property, such as rental income, property sales prices, and the cost of building materials, vary from one appraisal cycle to the next. For this and other reasons, each valuation cycle must stand on its own, and we agree with the DOR that a straight-line method to reduce value over the course of a lease agreement fails to meet accepted appraisal standards and does not yield a credible value.
45. The Taxpayer argues that if the DOR's method is followed, the unit will be valued at \$23,860 the day before the building is razed. However, as stated above, relevant economic and market data must be considered each valuation cycle, so predicting a future value is speculative and does not yield a credible value.
46. For the reasons stated above, this Board declines to adopt the Taxpayer's straight-line depreciation valuation method. In addition to being an over-simplified method that does not take into consideration various market factors that may arise over time, the Lease Agreement provides for options other than razing the building in 2026. Under the terms of the Lease Agreement, the Airport Authority could also take title to the building at the end of the term. There is also no prohibition on the parties renewing the Lease Agreement. The

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Taxpayer argues that if the Airport Authority takes title to the structure for its own benefit at the end of the lease term, the market value is still \$0 because the Taxpayer will not have an ownership interest in it. The Board disagrees with this argument. Under that scenario, the unit may no longer have value *for the Taxpayer*, but the unit would then have value for the Airport Authority or other new owner, as the case may be. The DOR is tasked with appraising land and improvements pursuant to Mont. Code Ann. § 15-7-101. The terms of the Lease Agreement merely shift the responsibility to pay property tax from the Airport Authority to the Condominium Association, and the individual unit owners in turn take on that responsibility, presumably through the purchase agreement, sublease, or other agreements not introduced as evidence. How the individual unit owners come to be liable for the tax is not at issue here, nor is it in this Board's jurisdiction and thus will not be discussed further. The point is the improvements retain some value even if ownership of it changes hands. It is the person or entity responsible for paying the tax that changes. Additionally, depreciating the value of the subject property to \$0 in 2026 could lead to absurd results should the Lease Agreement be renewed. The Taxpayer argues that the Airport Authority taking title of the improvements and the extension of the Lease Agreement seem unlikely at this time and should be addressed if and when it happens. The Board understands this argument, but because there are other options available and it is unknown for certain at this time what will happen as of December 14, 2026 with regard to the subject property, the Board finds that the DOR's valuation of the unit as it stands in the current cycle, without regard to a potential future event (whether that may be the razing of the building, the renewal of the Lease Agreement, or some other option), is appropriate.

DOR's Application of MCA § 15-8-111(4)(c)(i)

47. The Taxpayer also argues that the DOR failed to follow the requirements under Mont. Code Ann. § 15-8-111(4)(c)(i) in valuing the subject property. Specifically, the Taxpayer argues that the DOR valued the unit as if it were a

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stand-alone structure rather than a unit in a condominium project and this results in a higher value. The Taxpayer argues that the value should have been calculated for all of the improvements and then 1/60th of the value, which represents his ownership interest, should have been allocated to the Taxpayer per Mont. Code Ann. § 15-8-111(4)(c)(i). The Taxpayer argues that the DOR's valuation of the individual units as outbuilding/garages would produce a much higher cost figure than if the DOR had valued the entire building and then allocated the percentage of ownership to each unit owner as set forth in the Declarations. This Board understands the Taxpayer's argument that building separate units may require more materials and therefore may be more costly. However, the Taxpayer did not offer any evidence to support that argument, nor did he indicate what the value would be if the DOR had valued all of the improvements and then allocated 1/60th to each unit owner. Conversely, the DOR presented credible evidence showing how the value would be calculated under each alternative. As discussed below, the DOR presented an affidavit from the appraiser showing that the value of the unit would have been higher had the DOR performed the valuation on all of the improvements with 1/60th of the value allocated to each unit owner rather than as an outbuilding/garage as the DOR valued it.

48. Mont. Code Ann. § 15-8-111(5) requires the DOR to use the income approach when valuing commercial properties if sufficient relevant income information is available.² If sufficient relevant income information is not available to the DOR, then the DOR is required to use the cost approach to value the property. Because the unit owners are prohibited from renting out their units, there was no income information for the DOR to analyze and the DOR was left with the cost approach. Under the cost approach, the DOR is required to use the percent

² The sales comparison method is used for residential property and not commercial property. The Taxpayer argues that the car park/condominium garage is a residential property. The DOR has valued it as a commercial property according to the DOR's briefs. The PRC also lists the property as commercial. Because the classification of the unit was not appealed, this issue will not be further discussed in this opinion. Instead, this Board will focus on whether or not the DOR properly valued the unit as a commercial property.

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ownership set forth in the Declarations. However, the DOR states the valuation of car park/condominium garages presents a unique situation because following Mont. Code Ann. § 15-8-111(5)(c) would result in inequity among the different unit owners. Under the statute, each unit owner would be allocated 1/60th of the value of the building which would mean that each of the units would be valued at 302 square feet even though the actual internal square footage of the units ranges from 275.8 to 278.3 square feet.

49. In an attempt to equalize the values among the units, as is required by the Montana Constitution, the DOR valued the units as outbuilding/garages.³ The DOR based each unit's valuation on its actual internal square footage, which in the Taxpayer's case means that his unit was valued as a 276 square foot unit, rather than a 302 square foot unit. The DOR calculated the value based on the replacement cost and then applied depreciation, which includes physical depreciation, functional obsolescence, and economic obsolescence, to reach a value of \$21,310. As noted above, the DOR provided an affidavit from the appraiser showing that the value of the subject property would have been \$21,668.67, or \$358 higher, had the DOR valued the subject property and then allocated 1/60th of the value to each of the unit holders.
50. The Taxpayer argues that since the DOR did not follow Mont. Code Ann. § 15-8-111(5) by allocating 1/60th of the value of the improvements to each owner, the value should be disregarded, and Taxpayer should prevail. This Board's mandate is to find market value, so if we determine the DOR did not properly value the subject property, then we must assign the correct value. As stated above, this Board finds that the Taxpayer's method of calculating the value of the subject property undervalues the property based on the evidence presented. The DOR must follow the laws and accepted appraisal practice when valuing property in Montana. In addition to valuing property in Montana, the DOR is

³ The DOR states it used the "outbuilding/garage" code because it currently does not have a separate code for car park/condominium garages but anticipates this will be remedied for the future cycle.

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constitutionally mandated to equalize the values of such properties. Had the DOR strictly followed Mont. Code Ann. § 15-8-111(5) as the Taxpayer suggests, the values of all of the units in the car park would have been higher. Additionally, each of the units would be valued the same regardless of the fact that some have more square footage than others. Based on the evidence presented, this Board agrees with the DOR's approach as a reasonable attempt to equalize the values of the units among the various unit holders based on the actual square footage of their individual units.

DOR's Use of Sales Data in Support of Valuation

51. The Taxpayer argues that the 23 car park/condominium garage unit sales the DOR presented to support their cost valuation are not comparable because the units in Building F are newer and have a different lease termination period and the 2020 sales of units in Buildings D and E are outliers. He argues that since the sales comparison method of valuation is the preferred approach, the DOR's use of the cost method to value his unit is a concession that sufficient reliable information on comparison sales was not available. However, as stated above, the DOR's options for valuing commercial property are the income method or the cost method. The sales comparison method is not used to value commercial properties. The DOR states the sales data presented demonstrates the reasonableness of the appraisal, as well as the lack of measurable economic obsolescence due to the Lease Agreement's termination date as the Taxpayer describes. This Board agrees with the DOR that the sales data presented refutes the Taxpayer's argument that a willing and knowledgeable buyer would not pay the amount at which the DOR valued the subject property. Although the three sales in 2020 occurred post-lien date, the sales support the DOR's valuation as an accurate estimate of market value.

52. The Taxpayer argues that because the lease agreement for the units in Building F terminates in a later year than the Lease Agreement for the subject property, the annual value of the units in Building F would be \$1,661 as compared to

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\$1,490 for his unit if the straight-line depreciation methodology was used for those units and thus supports his valuation method. As previously stated, this Board does not find the Taxpayer's straight-line depreciation method credible for finding market value. Market value must be determined each cycle based on relevant economic factors and data available for that particular cycle.

CONCLUSION

53. This Board commends the Taxpayer for his efforts in finding an alternative value for the subject property. However, his method does not follow accepted appraisal practice, and as the evidence presented demonstrates, results in undervaluing the property for the 2021/2022 cycle. This Board finds that the DOR did consider economic obsolescence as part of its analysis of the depreciation it applied to the replacement cost calculation. The sales data presented did not support further deduction for the Lease Agreement termination date because other buyers were paying even more for similar units than the appraised value of the subject property in 2020. The DOR valued each unit based on the actual square footage of the individual units in order to equalize the values among the other taxpayers owning similar units. For these reasons, this Board finds the DOR value of \$21,310 appropriate for the 2021/2022 valuation cycle.

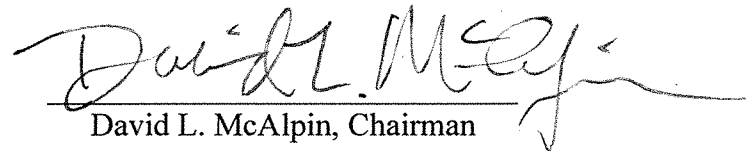
54. The Taxpayer's Motion for Summary Judgment is denied. The CTAB's decision upholding the DOR's valuation is affirmed.


BEFORE THE MONTANA TAX APPEAL BOARD
MARC MANLY v. STATE OF MONTANA, DEPARTMENT OF REVENUE

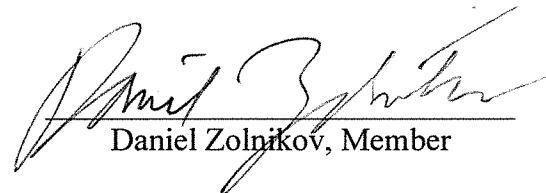
ORDER

55. Taxpayer's Motion for Summary Judgment is denied.
56. DOR is directed to maintain Taxpayer's subject property value of \$21,310 for 2021 and 2022.

Dated this 11th day of August 2022.


David L. McAlpin, Chairman


Amie Zendron, Member


Daniel Zolnikov, Member

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

BEFORE THE MONTANA TAX APPEAL BOARD
MARC MANLY v. STATE OF MONTANA, DEPARTMENT OF REVENUE

Certificate of Service

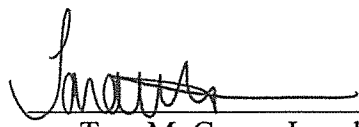
I certify that I caused a true and correct copy of the foregoing Findings of Facts and Conclusions of Law to be sent by email and United States Mail via Print & Mail Services Bureau of the State of Montana on August 11, 2022, to:

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Tara M. Green, Legal Secretary