

AUG 16 2024

Montana Tax Appeal Board

STATE OF MONTANA,
DEPARTMENT OF REVENUE,

Appellant,

v.

SCOTT BOBBETT,

Respondent.

CASE №: PT-2024-1

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

This is an appeal of a final decision by the Missoula County Tax Appeal Board (CTAB) granting in part Scott Bobbett, (Taxpayer) a reduction in value on the subject property located at 3110 W. Broadway, Missoula, Montana (Subject Property). The Department of Revenue (DOR) appealed that outcome to Montana Tax Appeal Board (MTAB) on January 30th, 2024. We reverse the CTAB's determination.

ISSUE TO BE DECIDED

Whether CTAB erred in partially granting the Taxpayer's request for a reduction in value to the Subject Property.

EXHIBIT LIST

The following evidence was submitted at the hearing:

Taxpayer Exhibits:

1. 2023 DOR Missoula Warehouse model;
2. DOR Income Calculations for Subject Property;
3. Taxpayer's 2021 Schedule E;
4. 2023 DOR Missoula Warehouse model output;
5. Map, Income value calculations and 2022 Schedule E;
6. DOR Land Model Sales;

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7. Taxpayer Spread sheet;
8. Land Valuation Model, MDOR Ex. C;
9. LMS #1 (Property Record Card);
10. LMS #2 (Property Record Card);
11. LMS #3 (Property Record Card);
12. LMS #4 (Property Record Card);
13. LMS #5 (Property Record Card);
14. LMS #6 (Property Record Card);
15. LMS #7 (Property Record Card);
16. LMS #8 (Property Record Card);
17. LMS #9 (Property Record Card);
18. LMS #10 (Property Record Card);
19. LMS #11 (Property Record Card);
20. LMS #12 (Property Record Card);
21. LMS #13 (Property Record Card);
22. Bobbett - MDOR 228 – RTC;
23. Bobbett - MDOR 229 – Costco's 2023 PRC; and
24. DOR Procedure 2-3-001.6, MDOR Ex. F.

DOR Exhibits:

- A. Original PRC;
- B. Post AB-26 PRC;
- C. Land sales model;
- D. Warehouse valuation model;
- E. Montana Residential, Commercial, and Industrial Property
Classification and valuation Manual; and
- F. DOR Procedure No. 2-3-001.6.

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PROCEDURAL HISTORY

The DOR valued the Subject Property at \$1,365,400 for the 2023/2024 appraisal cycle, with the land valued at \$1,120,134 and the improvements valued at \$245,266. *Ex. A.* The Taxpayer filed an AB-26, Request for Informal Classification and Appraisal Review, with the DOR on July 19, 2023. *MTAB Dkt. 2.* The DOR sent a Form AB-26 Determination Letter to the Taxpayer dated September 18, 2023, adjusting the property value to \$980,000, with the land valued at \$769,134 and the improvements valued at \$210,866. *Id.* The Taxpayer appealed the DOR's valuation to the CTAB on October 26, 2023, requesting a land value of \$290,176 and an improvement value of \$210,866. *Id.* The CTAB hearing was held on December 6, 2023, and the CTAB's decision partially granting the Taxpayer's application for reduction was sent to the parties on December 8, 2023. *Id.* The CTAB used the Taxpayer's actual income and expenses to value the Subject Property at \$694,000 based on an income method approach to value. The DOR appealed to MTAB on January 3, 2024, per Mont. Code Ann § 15-2-301, requesting a land value of \$769,134 and an improvement value of \$210,866, for a total of \$980,000. *MTAB Hr'g Tr. 3:7-9.* The MTAB hearing was conducted in Helena on May 30, 2024, at which the following were present:

- a. Scott Bobbett, Taxpayer; and
- b. Dave Burleigh, DOR Counsel; Kandy Fleurisma, Paralegal; Helen Greenberg, Lead Appraiser; Michell Staples, Area Manager; and Sam Burden, Business Analyst, and Income Specialist.

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

FINDINGS OF FACT

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

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2. The Subject Property is a commercial property owned by Scott Bobbett in Missoula County. *Ex. B.* The Subject Property is located at 3110 West Broadway, Missoula, Montana, and is identified by geocode 04-2200-08-3-02-06-0000. *Id.* The Subject Property's land encompasses 0.628 acres which includes a 9,200 square-foot warehouse/retail improvement. *Id.* The warehouse is divided into two halves and is leased to two tenants engaged in commercial activity. *MTAB Hr'g Tr. 20:16-21:2.*
3. The DOR valued the Subject Property at \$1,365,400 for tax years 2023 and 2024, allocating \$1,120,134 for the land and \$245,266 for the improvements but during the AB-26 process the DOR reduced the total value to \$980,000. *MTAB Dkt. 2.* At the December 6, 2023, CTAB hearing, the Taxpayers requested a further reduction, that the land value be reduced to \$290,716 and the improvements reduced to \$210,866. *Id.* The CTAB partially granted the Taxpayer's request and lowered the Subject Property's combined value to \$694,000. *Id.* The DOR appealed this decision to MTAB on January 3, 2024, reasserting that the total market value for the Subject Property should be \$980,000. *Id.*
4. The Taxpayer claims the rent rating of \$12.75 assigned by the DOR is excessive compared to the Subject Property's actual income per square foot of \$6.80. *MTAB Hr'g Tr. 5:7-18.* The Taxpayer submitted his IRS Form 1040 Schedule E Supplemental Income and Loss, showing an actual income and expenses of the Subject Property for 2021. *Ex. 3; MTAB Hr'g Tr. 11:7-15.*
5. The Taxpayer claimed the Subject Property's land is valued at \$28 per square foot while other surrounding properties, like Costco, are valued at \$6.80 per square foot. *MTAB Hr'g Tr. 9:18-10:19.* Costco recently purchased a 3-acre lot and demolished the 100,000 square foot building on the property to add parking spaces for its customers. *Ex. 22; MTAB Hr'g Tr. 16:19-17:11.* The Taxpayer testified that the DOR lowered the value of Costco's new lot from

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- \$50.00 per square foot to \$10.00 per square foot. *Id.* The Taxpayer argued that the Subject Property and Costco are similar in warehousing and compete for the same business. *MTAB Hr'g Tr. 9:18-10:19.* The Taxpayer believes his property should be valued closer to \$15.00 per square foot or roughly \$405,000. *MTAB Hr'g Tr. 24:23-25:2, 26:20-27:6.*
6. The Taxpayer argued that DOR's \$12.75 rent rating is too high for the commercial rental market in Missoula. *MTAB Hr'g Tr. 18:2-22.* The Taxpayer claimed the DOR assigned a rent rating of \$15.00 to several properties, which are now vacant. *Id.* The Taxpayer believes landlords renting similar properties are getting rents closer to \$7.00 per square foot. *Id.* Taxpayer agreed that some nicer buildings in Missoula will command \$14.00 per square foot but are less desirable by renters. *Id.* The Taxpayer acknowledged that the Subject Property's rents may be low but contended that he would lose his tenants if he raised his rent, which would cost him more in the long run. *Id.*
 7. The Subject Property is leased to two tenants using gross modified leases. *MTAB Hr'g Tr. 21:3-25.* The Taxpayer is responsible for repairs and property taxes, and the tenants pay a set amount each month. *Id.* In 2023, the Taxpayer started including rent accelerators in his leases, including a provision that if property taxes rise more than 1.5%, the tenant is responsible for any additional property tax. *Id.* The Taxpayer argued that present arrears in rent also negatively impact his total income. *MTAB Hr'g Tr. 27:20-28:3.*
 8. During discovery, the Taxpayer requested the effective gross income, and the rent rating for the Subject Property's neighbors. *MTAB Hr'g Tr. 30:10-33:13.* The Taxpayer claims he was not equally assigned a rent rating because his neighbor's rent ratings were significantly lower than those of the Subject Property. *Id.* The DOR provided the warehouse model used to value the Subject Property, including the rent rating used in valuing the Subject Property. *Id.* When challenged by the Taxpayer on why the DOR did not provide a rent rating for a quarter mile around the Subject Property, the DOR stated that they

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- provided him the rent rating used to value the subject property, and some of the neighboring properties are classified differently and are valued using a different model rather than the warehouse model used to value the subject property. *Id.* The Taxpayer constructed a reverse calculation to determine the rent rating assigned to the properties used in the DOR models. *Ex 7; MTAB Hr'g Tr. 38:19-39:16.* The Taxpayer argues that using a rent rating to value a property and then adding in the land value is overvaluing properties. *Id.* On cross-examination, the Taxpayer agreed that actual rents vary across properties and do not always represent the market rent. *MTAB Hr'g Tr. 39:21-41:14.*
9. DOR Lead Appraiser, Helen Greenberg, testified that the DOR appraises commercial property using mass appraisal while staying within the policy and procedures of the DOR and the Montana law. *MTAB Hr'g Tr. 43:1-43:16.* The DOR does not value any properties using individual fee appraisals. *Id.* The income method is used because it is most likely the value an investor would consider when buying commercial properties. *MTAB Hr'g Tr. 44:15-21.* DOR appraisers collect data for a two-year appraisal cycle and then spend approximately 18 months analyzing the data and building their models. *MTAB Hr'g Tr. 43:10-43:16.*
10. During the AB-26 informal review process, the Taxpayer voluntarily provided the DOR with his income information. *MTAB Hr'g Tr. 44:1-4.* The DOR did an onsite review to confirm the property's characteristics. *Id.* During the AB-26 process, the DOR lowered the Subject Property's rent rating from \$14.50 to \$12.75 because the Subject Property was not leased using triple net leases, causing the Taxpayer to have increased expenses. *MTAB Hr'g Tr. 44:1-9, 48:24-49:12.* Additionally, the land was moved from superior type pricing to primary pricing based on neighborhood characteristics, dropping the property from \$46.00 per square foot to \$30.00 per square foot. *MTAB Hr'g Tr. 48:15-19.* The Subject Property's total value was lowered from \$1,395,000 to \$980,000 during the AB-26 review process. *MTAB Hr'g Tr. 43:21-44:4.*

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11. Ms. Greenberg testified that the income approach to value combines the land and improvement values together. *MTAB Hr'g Tr. 44:22-24*. The DOR determines the portion of value allocated to land using a square foot model for Neighborhood 802 which only contains land zoned as commercial. *MTAB Hr'g Tr. 47:12-16, 57:10-14*. To value land using the model, DOR uses commercial land sales to determine a base lot that is the typical size for the market area. *MTAB Hr'g Tr. 54:6-55:21*. The base lot in the model was 20,000 square feet and valued at \$30.10 per square foot or \$602,000. *Id.* The DOR determined the incremental/decremental rate of \$22.65 for each square foot of property above the base lot. *Id.* Because the Subject Property was 7,379 square feet larger than the base lot derived by the analysis, the Subject Property was assessed an additional incremental value of \$167,134. *Id.* The DOR then adds the base rate to the incremental value to get a total value of \$769,134. *Id.* The DOR uses the coefficient of dispersion (COD), the coefficient of variation (COV), and the P values to ensure the model is accurate. *MTAB Hr'g Tr. 56:12-57:7*. Ms. Greenberg testified that the COD, COV and P values were within industry standards, indicating a strong and reliable model. *Id.* Ms. Greenberg testified that the land model pulled sales from four or five square miles of commercial area on the north end of Missoula, which included West Broadway and North Reserve. *Id.*
12. DOR values properties using income and cost approaches to compare valuation method results and ensure they reconcile within 20% of each other according to industry and DOR standards. *Ex. F; MTAB Hr'g Tr. 45:1-11*. DOR valued the Subject Property using the cost approach at \$1,074,484. *Ex. B; MTAB Hr'g Tr. 67:2-68:4*.
13. In the income approach calculation, the Subject Property was given a standard 15% reduction for vacancy and collection. *MTAB Hr'g Tr. 48:24-49:12*. Vacancy and collection are determined using industry resources such as CoStar and Coldwell Banker Richard Ellis (CBRE). *MTAB Hr'g Tr. 62:19-25*. The

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Subject Property was given a 31% reduction for expenses which was determined from expenses reported by other taxpayers in Missoula County. *MTAB Hr'g Tr. 48:24-49:12; 72:3-20:16-23*. The inputs for the income model are determined by standardizing and normalizing the data volunteered by commercial taxpayers into a table for valuing warehouses which is applied across Missoula County. *MTAB Hr'g Tr. 49:19-50:11; 59:6-22*. The income and expense information are analyzed, and each expense is turned into a percentage based on the information reported to the DOR. *MTAB Hr'g Tr. 85:24-86:10*.

14. Using mass appraisal, the DOR estimated the Subject Property's net operating income at \$68,796, while the Taxpayer reported a slightly lesser amount on his Schedule E. *Ex. 3; MTAB Hr'g Tr. 96:10-16*. The DOR gave the Taxpayer a bigger utility deduction of \$4,200 in the income formula because of the modified gross leases. *MTAB Hr'g Tr. 48:24-49:25*.
15. After reviewing the Taxpayer's income and expense figures, the DOR determined that the \$6.80 per square foot rent reported by the Taxpayer was significantly below market rent for this area and is low due to management decisions. *MTAB Hr'g Tr. 60:17-61:8*. If the DOR used the Taxpayer's lower rent, it would create an inequity among similar taxpayers because the DOR procedure uses market rent in mass appraisal. *Id.* Additionally, Montana must value all properties at market value, not what any individual property generates. *MTAB Hr'g Tr. 84:24-85:7*.
16. The Subject Property was assigned a rent rating of \$12.75. *MTAB Hr'g Tr. 75:1-13*. Rent ratings are calculated using data reported to the DOR by taxpayers in Missoula County. *MTAB Hr'g Tr. 85:20-86:10*. DOR Business Analyst and Income Specialist, Sam Burden, testified that the data such as lease prices were verified, and the DOR determined the nine rent ratings used to

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value warehouses through a regression analysis of the data. *MTAB Hr'g Tr. 84:5-9, 86:13-87:2*. The DOR develops nine rent ratings to coincide with the three levels of capitalization rates. *MTAB Hr'g Tr. 85:9-18*. Mr. Burden testified that the model was reliable and accurately represented the area's rent. *MTAB Hr'g Tr. 84:15-23*.

17. DOR appraisers can choose from three capitalization rates when determining a property's investment risk level. *MTAB Hr'g Tr. 59:18-22, 85:10-18*. Capitalization rates are determined by dividing the income of a property by its sales price. *MTAB Hr'g Tr. 87:4-11*. The DOR developed three urban capitalization rates and three rural areas capitalization rates. *Id.* All valid sales in Montana of commercial properties in 2021 and 2022 were used to determine the overall capitalization rate. *Id.* The Subject Property was given an urban capitalization rate of 5.84%. *MTAB Hr'g Tr. 59:18-22, 60:9-14*. The tax rate of 1.18% is added to the capitalization rate because taxes are not considered an expense by the DOR. *Id.* The Subject Property has an overall capitalization rate of 7.02%. *Id.* The Subject Property was assigned an urban middle capitalization rate with a corresponding rent rating of 6. *MTAB Hr'g Tr. 89:5-14*.
18. To determine the value of the Subject Property, Ms. Greenberg took the 9,200 square feet square feet of the Subject Property's improvement and multiplied it by the rent rating of \$12.75 to get a projected gross income of \$117,300. *MTAB Hr'g Tr. 60:1-16*. Vacancy and collections are subtracted at 15% or \$17,595 to get an effective gross income of \$99,705. *Id.* The 31%, or \$30,909 for typical expenses, was subtracted to get the net operating income of 68,796. *Id.* The net operating expense was divided by the overall capitalization rate of 7.02% to get a combined land and improvements income value of \$980,000. *Id.*
19. Ms. Greenberg valued the Subject Property differently from Costco because of economies of scale, with Costco's lot being 17 acres and the Subject Property

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being 27,000 square feet. *MTAB Hr'g Tr. 50:24-51:22*. Additionally, the Subject Property would not be considered retail because it is unfinished inside, does not have additional electricity that goes with retail, and, in the appraiser's opinion, would most likely sell as a warehouse. *Id.* Additionally, Costco is valued using a retail model. *MTAB Hr'g Tr. 51:1-5, 75:16-76:2*. DOR Area Manager, Michelle Staples, testified that Costco's purchase of an adjacent lot was not an arms-length transaction because of the price paid, Costco's need to expand, the fact that the sale was heavily covered in the press, and because the sale was not offered on the open market. *MTAB Hr'g Tr. 92:23-93:8*.

20. The DOR argues that the \$12.75 rent rating is also justified because the Subject Property has driveway access to Broadway Street with a high traffic count. *MTAB Hr'g Tr. 33:21-34:11*. The DOR did remove the superior type pricing from the land even though the Subject Property does have a strong traffic count. *MTAB Hr'g Tr. 56:5-11*.

JURISDICTION AND STANDARD OF REVIEW

21. 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 MTAB. Therefore, this Board maintains jurisdiction to hear and decide this matter. *Mont. Code Ann. §15-2-301*
22. This Board may hear appeals de novo. *Dept. of Revenue v. Burlington N.*, 169 Mont. 202, 213-14, 545 P.2d 1083 (1976). "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, ¶ 22, 370 Mont. 270, 275, 303 P.3d 1279, 1282.
23. The Board's order is final and binding upon all parties unless changed by judicial review. *Mont. Code Ann. § 15-2-301(6)*.

CONCLUSIONS OF LAW

24. To whatever extent the following conclusions of law may be construed as findings of fact, they are incorporated accordingly.
25. “All taxable property must be appraised at 100% of its market value....” *Mont. Code Ann. § 15-8-111*.
26. “[I]n connection with any appeal under [Mont. Code Ann. § 15-2-301], the Montana 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)*.
27. 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.*, 169 Mont. at 214, 545 P.2d at 1090. However, DOR cannot rely entirely on the presumption in its favor and must present a modicum of evidence showing the propriety of their action. *Western Air Lines v. Michunovich*, 149 Mont. 347, 353, 428 P.2d 3, 7 (1967).
28. 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.
29. “‘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, 49 P.3d 43, 47); see *Northwest Land & Dev. v. State Tax Appeal Bd.*, 203

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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)).

30. The term “improvements” includes all buildings, structures, fences, and improvements situated upon, erected upon, or affixed to land. *Mont. Code Ann. § 15-1-101(1)(i)*.
31. The Legislature intended the Department to utilize a number of 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*, 281 Mont. 196, 208-09, 933 P.2d 815, 823 (1997).

DISCUSSION

32. The DOR valued the Subject Property using the income approach. The income approach to value is DOR’s preferred commercial property valuation method. The income method is the type of analysis a prospective buyer of a commercial property would use, and the Board agrees that it is the best way to value a commercial property. The DOR must use mass appraisal because there are too many properties in Montana for the DOR to value each individual property using actual income and expense information from that business. The use of the income method to value commercial property has been approved by the Montana Legislature and upheld in Montana courts. Using the income approach, the DOR valued the Subject Property at \$980,000 for the 2023/2024 tax cycle. The Board finds that this value best represents the market value for the Subject Property.
33. The Board finds that a DOR rent rating of \$12.75 is acceptable. The Taxpayer argued that surrounding properties have a lower rent rating. The Taxpayer mainly focused on Costco, which the Taxpayer argued Costco is valued

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significantly less per square foot. While the DOR did not contest this claim, the Taxpayer only presented Montana Cadastral property record card relating to valuation and a realty transfer certificate as evidence of the price disparity. While the Board did not receive reliable testimony on Costco's actual rent rating, the Board acknowledges that the Subject Property and Costco are not comparable. The Board found Ms. Staples' testimony credible that the lot Costco purchased was not an arm's length transaction because Costco needed to expand, and the lot was not offered on the open market. Additionally, the Subject Property has 9,000 square feet of improvements on a 27,000 square feet lot, while Costco has over 160,000 square feet of improvements with a 13.5 to 17-acre lot. Lastly, the Taxpayer did not request to be valued using the same retail model as Costco. The Taxpayer did present evidence that he has two tenants engaged in commercial activity but did not provide evidence showing his property was more of a retail space than a warehouse. On the other hand, the DOR appraiser testified that the Subject Property lacked certain aspects of a retail space, such as finishes and retail electricity. While the Board agrees with the Taxpayer that Costco and the Subject Property may compete for business on some level, they are not comparable and are valued using different inputs and models.

34. When using the income formula, one total value is determined, and the DOR assigns a percent of that value to the land and improvements of a property. The DOR determination of the percent of value assigned to the land using comparable land sales is reasonable. The DOR used nine sales of similar properties to find the value of the Subject Property's land. The DOR's use of commercial sales to establish a base rate as well as an incremental/decremental rate is logical, and the Board received credible testimony that the model used was within industry standards. The Board agrees with the DOR's decision to remove the superior type pricing and place the land on primary pricing. The Subject Property does have access to Broadway Street, which has a higher traffic count. However, the Board received testimony that the Subject Property

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is also located on Railroad Street and is not plated for a driveway to Broadway Street, which might negatively affect the Subject Property's visibility or accessibility in the future. The Board is tasked to determine the market value for the Subject Property as of the lien date.

35. The DOR estimates the effective gross income of the Subject Property by multiplying the rent rating by the usable area. The rent rating is determined using rental income reported by other warehouse owners in Missoula County. The DOR analyzes this data and determines nine standard rent ratings for Missoula County. While the Taxpayer did present his actual rents, the DOR is mandated to use mass appraisal to equalize taxes among taxpayers. The DOR cannot use actual rental inputs for one property while using estimates for other taxpayers. The DOR is mandated to use market rents to value properties in Montana. The Taxpayer admitted on cross-examination that actual rents vary across properties and do not always reflect market rent because of management decisions. Additionally, because of the sheer number of commercial properties in Montana, the DOR cannot gather the required inputs for the income equation for each property, let alone run an individualized income calculation for every commercial property using their actual income and expenses. The Board understands the need to estimate effective gross income using rental ratings and was presented evidence by the DOR relating to the rent rating that was not contest with credible evidence. The only testimony the DOR offers regarding the assigned rent rating is that the rent rating was lowered to a six because of the Taxpayer's use of gross leases. Later, when questioned, the DOR Business analysis testified that the assigned rent rating of six corresponds to the middle urban capitalization rate. The Board understands that the DOR determines three capitalization rates, and the three lower rent ratings would go with the lowest capitalization rate, the mid-three rent ratings would go with the middle capitalization rate, and the top three rent ratings would go with the highest capitalization rate. Before the AB-26 review, the Subject Property had a rent rating of seven that would not have corresponded with the middle urban

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capitalization rate assigned to the Subject Property. The DOR fixed this during the AB-26 review process by lowering the rent rating. The DOR presented evidence that the building was unfinished, which could demand a lower rent. If additional credible evidence of the property's condition or defects affecting the property's rent income was offered. However, the Board cannot lower the rent rating simply because the Subject Property neighbors could have a lower rent rating. Lastly, the Board cannot adopt the Taxpayer's \$6.80 per square foot rent. The Board feels that based on the evidence presented by the DOR and in Exhibit D, the market rents in Missoula are more than the subject's actual rent of \$6.80 per square foot for warehouses, and the Taxpayer's rents do not represent the market rents in Missoula.

36. The DOR estimates vacancy and collection loss at a standard 15% reduction. The 15% is determined using appraisal industry resources and is applied uniformly across all warehouses. To determine expenses, the DOR standardizes expense information reported in Missoula County. The Board finds that the 15% reduction for vacancy and collection and the 31% reduction for expenses are reasonable. The Board acknowledges the DOR's increase in expenses for the Subject Property because the gross leases used by the Taxpayer are proper.
37. The capitalization rate of 7.02% used by the DOR is reasonable. The capitalization rate is developed using all sales in the state of Montana. The sale price of a building is divided by its income generated to get a capitalization rate. Using all sales in Montana, the DOR determines three capitalization rates for urban properties such as the Subject Property. Because property taxes are not considered an expense by the DOR, the property taxes are added to the capitalization rate to account for property taxes. The Board heard testimony relating to the market risk in Missoula and agrees that the overall urban middle capitalization rate of 7.02% is proper.

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38. The DOR followed all Montana laws and policies when appraising the Subject Property. The DOR calculated the replacement cost new of the Subject Property, and it was within the DOR mandated 20% differential between income and cost approach. When reviewing the appraisal of the Subject Property, the Board could not find a fault with the DOR appraisal. The Taxpayer bears the burden to prove the DOR made a mistake in its appraisal, and that burden was not overcome by the Taxpayer.
39. The Board appreciates the Taxpayer providing his actual income and expense data to the DOR. The Board hopes that the Taxpayer will continue to submit his income and expense information to assist the DOR in valuing property in the future. The DOR uses the information provided by taxpayers to establish the rent rating and expenses for the Subject Property and their neighbors if they are in Missoula County. While the DOR must use market value and mass appraisal, the information submitted by Taxpayers is vital in estimating taxable value.

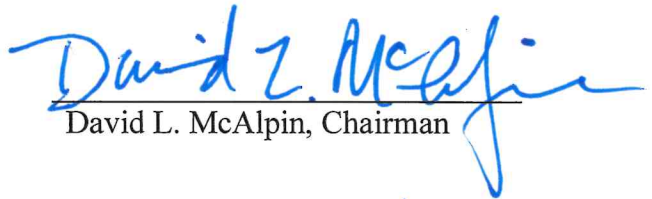
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ORDER

40. The DOR's appeal is granted.
41. The DOR will set the value of the Subject property at \$980,000 for the 2023/2024 tax cycle.

Dated this 16th day of August 2024.




David L. McAlpin, Chairman


Amie Zendron, Member


Travis Brown, 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
STATE OF MONTANA, DEPARTMENT OF REVENUE v. Scott Bobbett

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 16, 2024, to:

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State of Montana, Department of Revenue
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Helena, MT 59604-7701

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