

BEFORE THE STATE TAX APPEAL BOARD
OF THE STATE OF MONTANA

PATRICK G. & JUDY R.)	DOCKET NO.: PT-1999-11
MCDONALD,)	
Appellants,)	
)	
-vs-)	
)	
THE DEPARTMENT OF REVENUE OF)	FINDINGS OF FACT,
THE STATE OF MONTANA,)	CONCLUSIONS OF LAW,
)	ORDER and OPPORTUNITY
Respondent.)	<u>FOR JUDICIAL REVIEW</u>

The above-entitled appeal was heard on March 16, 2000, in the City of Missoula, in accordance with an order of the State Tax Appeal Board of the State of Montana (the Board). The notice of the hearing was given as required by law.

Patrick McDonald, owner, and daughter, Kristi McDonald, presented testimony in support of the appeal. The Department of Revenue (DOR), represented by appraiser Jim Wilcox, presented testimony in opposition to the appeal. Testimony was presented and exhibits were received and a schedule for a post-hearing submission from the DOR and an opportunity for a response from the taxpayer was established. The Board then took the appeal under advisement; and the Board having fully considered the testimony, exhibits and all things and matters presented to it by all parties, finds and

concludes as follows:

FINDINGS OF FACT

1. Due, proper and sufficient notice was given of this matter, the hearing, and of the time and place of the hearing. All parties were afforded opportunity to present evidence, oral and documentary.
2. The property subject of this appeal is described as follows:

3 acres in Section 14, Township 13 North, Range 19 West, in the southwest $\frac{1}{4}$, of the northeast $\frac{1}{4}$, Plat J3, city of Missoula, Missoula County, State of Montana. (Assessor Code - 1590504).
3. For the 1999 tax year, the DOR appraised the subject property at a value of \$265,080 for the land and \$412,420 for the improvements.
4. The taxpayers have only appealed the DOR's value determination of the land.
5. The taxpayers appealed to the Missoula County Tax Appeal Board on November 16, 1999, requesting a reduction in value to \$75,000, stating:

The appraised value of the one parcel of land supporting 6 duplexes is not commensurate with comparable pieces of property. Comparable sales indicate \$47,647 per acre. One time increase from \$90,000 to \$265,000 is not realistic of changes in property values in Missoula, Montana.
6. In its December 23, 1999 decision, the county board upheld the Department of Revenue's value for the land, stating:

The appellants did not meet their burden of proof

to establish that their methodology and comparable properties were more representative market valuations yet still fair and consistent vis-à-vis other duplex property taxpayers. The appeal is denied.

7. The taxpayers then appealed that decision to this Board on December 29, 1999, stating:

The appraised value for the one 3-acre parcel of land supporting 6 duplexes is not commensurate with comparable pieces of property. Comparable sales indicate \$29,650 - \$24,970 per acre. One time increase from \$90,000 to \$265,000 is not realistic of changes in property values in Missoula, Montana.

8. The taxpayers modified their requested land value from \$75,000 to \$78,000.
9. The taxpayers have appealed the DOR's value indication on this property during the past two appraisal cycles. In 1987, the State Tax Appeal Board set the value of this 3-acre parcel at a value of \$45,000 (PT-1986-2273). Neither party appealed that decision to the District Court. In 1994, the Missoula County Tax Appeal Board set the value of the 3-acre parcel at a value of \$90,000. Neither party appealed that decision to the State Tax Appeal Board.

TAXPAYER'S CONTENTIONS

Mr. McDonald testified that the 3-acre parcel was purchased in 1975 and the six duplex structures were later constructed. Mr. McDonald emphasized that the recorded legal

description for the property is one 3-acre parcel, not six legally defined lots. Mr. McDonald stressed that he could not even entertain the idea of selling one duplex unit, because each unit does not have its own building site. The 3-acre parcel would have to be subdivided. Mr. McDonald indicated that he spoke with individuals familiar with the subdivision process and he was informed that if it were approved for subdividing, there would be considerable time and costs associated with the process.

Taxpayers' exhibit #1 is a copy of the assessment notice for the subject property. The emphasis of this exhibit is to illustrate that the land value increased from \$90,000, the prior appraisal cycle, to \$265,080, the current appraisal cycle.

Taxpayers' exhibit #2 is the brochure prepared and distributed by this Board and the county boards. The taxpayers' emphasis is to the land valuation language: **Land Valuation** - *Sales of vacant parcels in each neighborhood are studied to establish the market value of land. In areas where no vacant land sales have occurred, structure values are removed from improved sales. Computer Assisted Land Pricing (CALP) programs assist the appraiser in appropriately applying land values to all parcels, considering size and influencing factors.*

Mr. McDonald presented two vacant land sales to offer support for his requested value determination. The following table

summarizes exhibits #4 and #5, along with the pertinent testimony.

Exhibit	TP - #1	TP - #4	TP - #5
Property	Subject	E. Dickinson St.	Daleworth
Sale date	NA	1/25/99	7/15/98
Sale price	NA	\$47,500	\$106,000
DOR land value	\$265,080	NA	NA
Land area - acres	3 acres	.85 acres	3.59 acres
Price per acre	\$88,360	\$55,882	\$29,526
Land area - square feet	130,680 SF	37,026 SF	156,380 SF
Price per square foot	\$2.03	\$1.28 SF	\$.68 SF
Location	1401 E. Dickinson St.	Across the street from the subject	1 mile north of the subject

Mr. McDonald recognized the fact that the sale prices of the comparable properties require adjustments for differences. The first adjustment addressed by Mr. McDonald is the adjustment for time. Both comparable properties sold after the DOR's appraisal date. Taxpayers' exhibit #6 is a copy of a letter dated October 25, 1999, from DOR appraiser, Jim Wilcox. In pertinent part, this exhibit states: *"As you can see, the increases in values actually represent an increase of approximately ten (10%) per year, well within the expected appreciation in values for Missoula income generating properties, especially when considering the Rattlesnake location of these properties. I cannot at this time justify adjustments of the existing 1997 values."*

While exhibit #6 addresses a separate rental property owned by the taxpayer, it is located in the vicinity of the subject property.

Taxpayers' exhibit #7 is a letter from real estate appraiser, Thomas Stevens. This document was prepared for the taxpayer to address the adjustment for size. Summarized, this exhibit states the following: *"I have found through my research that*

land transactions in the Missoula real estate market have a size/price relationship whereby larger tracts will sell for less per unit of comparison, while smaller tracts sell for more. Typically, the unit of comparison for larger tracts is value or dollars per acre.

This adjustment, as derived from market transactions, relates to a 20%-30% adjustment for a 50% ± size differential. This adjustment can be positive or negative, depending on the size of the comparable land transaction and the subject under study.

Specific to your question: The price per acre of a tract .85 acres in size versus a subject of 3 acres requires the .85 acre comparable to be adjusted downward for a valid indication. Using a 25% adjustment factor for a 50% size difference, I compute the required adjustment to be a negative 35.8% ±, using the subject 3 acres as the base figure. (emphasis added)

Mr. McDonald testified that Tom Stevens was hired to prepare this document (exhibit #7).

Taxpayers' exhibit #8 illustrates the adjustment calculation for time:

Time Adjustment Calculation. I have taken the comparable sales information and first calculated what the per acre cost of the properties were so that we would be comparing apples to apples.

Comparable Sale #1 (.85 acres sold on 1/25/99 for \$47,000):

<u>Sale Date</u>	<u>Number of Years</u> <u>From 1/1/97</u>	<u>Cost per acre</u>	<u>Reduction</u> <u>for Time</u>	<u>Adjusted</u> <u>Value/Acre</u>
1/25/99	2	\$55,882	-\$9,698	\$46,184

Proof of Time Adjustment Calculation:

\$46,184 = per acre price if sold on 1/1/97

\$ 4,618 = 10% increase as of 1/1/98

\$50,802 = 1998 value

\$ 5,080 = 10% increase as of 1/1/99
\$55,882 = cost per acre at time of sale

Comparable Sale #2 (3.59 acres that sold on 7/15/98 for \$106,000):

<u>Sale Date</u>	<u>Number of Years From 1/1/97</u>	<u>Cost per acre</u>	<u>Reduction for Time</u>	<u>Adjusted Value/Acre</u>
7/15/98	1.53	\$29,526	-\$4,035	\$25,491

Proof of Time Adjustment Calculation:

\$25,491 = per acre price if sold on 1/1/97
\$ 2,549 = 10% increase as of 1/1/98
\$28,040 = 1998 value
\$ 1,486 = 10% increase per year x .53 year
\$29,526 = cost per acre at time of sale

Taxpayers' exhibit #9 illustrates the adjustment calculation for size:

Size Adjustment Calculations

Comparable Sale #1 (.85 acres sold on 1/25/99 for \$47,500):

<u>Size of Parcel</u>	<u>Sale Price</u>	<u>Cost per Acre</u>	<u>35.8% Reduction (per acre)</u>
.85	\$47,500	\$55,882	-\$20,006

Exhibit #10 illustrates the taxpayers' time and size adjustments applied to the comparable sales along with the DOR's value determination. This exhibit illustrates the following:

COMPARABLE SALES COMPARISON

<u>Size of Property</u>	<u>Date of Sale</u>	<u>Sales Price</u>	<u>Per Acre Price</u>	<u>Effective Cost Per 3 Acres (at time of sale)</u>	<u>Time Adj. (per acre)</u>	<u>Size Adj. Price</u>	<u>1997 Per acre</u>	<u>3 acre Price</u>
.85	1/25/99	\$ 47,500	\$55,882	\$167,646	-\$9,698	-\$20,006	\$26,178	\$ 78,534
3.59	7/15/98	\$106,000	\$29,526	\$ 88,578	-\$4,035	-----	\$25,491	\$ 76,473
3.0 (subject prop)			\$88,360 (per DOR)					\$265,000

Based on exhibit #10, the adjusted sales prices for the comparable properties indicate a market value for the subject

parcel of \$78,534 to \$76,473.

Mr. McDonald testified that the current zoning classification for the subject property is RLD-4, which allows for four dwellings per unit, per half acre of land area. Mr. McDonald testified the zoning classification for the comparable sale #1 is also RLD-4. The zoning classification for comparable sale #2 was RLD-2, but a zone change or variance was granted to allow for the property to be subdivided and developed with approximately nine single-family dwellings.

DOR'S CONTENTIONS

Mr. Wilcox testified *"I did a little research into this, trying to find sales in the Rattlesnake area or anywhere in Missoula that encompass six duplexes in one sale. I was not able to find that. I checked and checked and there was one case on the north hills where they sold three duplexes, but each one of those duplexes of course was on its own land and they were owned by Valley Electrical. That was the only piece of property I could find where multiple duplexes, identical duplexes have been sold within the last, within the 92 to 96 period."*

In the process of valuing the subject property the DOR attributed 21,780 square feet of land area to each duplex structure. The DOR has six property record cards for the subject property that illustrate the following with respect to the land:

The DOR's post-hearing submission states: "...I have reviewed each sale and have discovered that each parcel used for determination of land value was a vacant tract of **Residential** land."

Mr. Wilcox stated that there have been no sales of property consisting of six duplexes in the immediate area.

Mr. Wilcox stated that this three-acre parcel could be subdivided, and if this subdivision were to take place, each individual lot would be valued more than the whole. *"What we're assuming that if this property were sold, it would be very unlikely a typical sale would include six duplexes. A typical sale would probably include one duplex, maybe two duplexes"*.

BOARD'S DISCUSSION

The Board asked Mr. Wilcox the question, *"Do you know what the zoning is, or if duplexes are permitted on the land sales illustrated on exhibit B?"* Mr. Wilcox responded, *"That would be second guessing the appraiser, I would guess that she would not put sales of residential property on a commercial valuation."* Mr. Wilcox also testified *"We try to establish individual models for different types of commercial, investment or income producing properties."*

Mr. McDonald stated that the current zoning classification for the subject property is RLD-4, as is comparable

sale #1. As previously mentioned, this zoning classification allows for four dwellings per unit, per half acre of land area. The zoning classification for comparable sale #2 was RLD-2. While no person(s) directly involved with the comparable sale #2 offered testimony to the circumstances surrounding the sale, it was testified by Mr. McDonald that the property has been subdivided and approved for the development of approximately nine single-family dwellings. This sale could have been predicated on a zone change or a variance. Zoning should be a consideration when selecting comparable sales because this is a governmental restriction and could affect the property's highest and best use. It was testified that the zoning classification RLD-4 allows for four dwellings per unit, per half acre of land area. If the subject property were developed to its highest potential based on the current zoning allowed by the City of Missoula, the property had the potential to be developed with six four-plexes or 24 rental units. This is also assuming that all setback requirements could be met. In addition, it was testified that the subject property is not utilizing the public sewer system; therefore, the area for drain-fields would need to be considered. Sale #1 is zoned the same as the subject property; therefore, an adjustment would not be warranted.

The taxpayers retained the services of Thomas G. Stevens, MAI, Stevens & Co., Real Estate Appraising & Consulting Group. The Board does not dispute Mr. Stevens' expertise in analyzing the real

estate trends for the Missoula area, but there has been no support presented to the Board that resulted in Mr. Stevens' conclusion of a 35.8% size adjustment. In addition, it is not clear to this Board that exhibit #7, prepared by Mr. Stevens, was developed with the knowledge that the information provided would be used in establishing the market value for the property subject of this appeal. **Uniform Standards of Professional Appraisal Practice (USPAP) 1999 Edition, Standard 4, Real Property/Real Estate Consulting, Development.**

Standards Rule 4-2 (This Standards Rule contains specific requirements from which departure is permitted. See **DEPARTURE RULE.**)

- (a) clearly identify the client's objective;
- (b) define the problem to be considered, define the purpose and intended use of the consulting service, consider the extent of the data collection process, adequately identify the real estate and or property under consideration (if any), identify any extraordinary assumptions, hypothetical conditions, and special limiting conditions, and the effective date of the consulting service;
- (c) collect, verify, and reconcile such data as may be required to complete the consulting service; all pertinent information shall be included;
 - (i) if the market value of a specific property is pertinent to the consulting assignment, an appraisal in conformance with Standard 1 must be included in the data collection;

Comment: If an appraisal is pertinent, the appraiser performing the consulting service should clearly review the ETHICS RULE and the Comment at the beginning of STANDARD 4 to ensure that any personal interests of the appraiser or contingent compensation for the consulting service do not conflict with the independence required of the appraisal function.

- (d) Apply the appropriate consulting tools and techniques to the data collected.
- (e) **Base all projections on reasonably clear and appropriate**

evidence.

Comment: A consulting service must begin with a clear identification of the client's objective, which may not be explicit in the client's statement of the assignment. The appraiser should precisely define the nature of the problem the client faces and the purpose of the consulting service. If the consulting service involves specific real estate or property, the appraiser must obtain a legal description, street address, or other means of specifically and adequately identifying the estate of property. **(emphasis added)**

This Board is not taking the position that Mr. Stevens violated USPAP. He may not have been provided all of the facts.

The Board is faced with weighing the evidence and testimony presented. In this appeal, there has been no supporting documentation for a size adjustment.

The taxpayers employed an adjustment for time of 10% annually (exhibits #6, #8 and #10.) This time adjustment came about from a document prepared by DOR appraiser, Jim Wilcox (exhibit #6). Once again, the Board was not presented any supporting documentation as to how the 10% annual increase in real estate values was derived. Therefore, the Board will disregard any adjustment with respect to time.

Mr. Wilcox testified that he was not the appraiser for the DOR who created the CALP model. Mr. Wilcox testified, "*We try to establish individual models for different types of commercial/investment/income producing properties.*" Mr. Wilcox went on to agree that the subject property is an income producing property.

15-1-101. (1) Except as otherwise specifically provided, when terms mentioned in this section are used in connection with taxation, they are defined in the following:

(d) (i) The term "commercial", when used to describe property, means property used or owned by a business, a trade, or a corporation as defined in 35-2-114 or used for the production of income, except property described in subsection (1) (d) (ii). (emphasis added)

Mr. Wilcox indicated that the DOR generates values for property by means of the income approach to value in Missoula County. If the value indication from the income approach is within 10% of the value indication from the cost approach, the appraiser will use the income approach value. Otherwise, the indication from the cost will be used. The Board asked Mr. Wilcox to provide the value indication for the property that was generated from the income approach. This information came into the record by means of the DOR's post-hearing submission. The DOR's value indication for the property from the cost and income approaches are as follows:

Property Record Card	Cost Value	Income Value
1 of 6	\$118,580	\$120,900
2 of 6	\$117,380	\$119,700
3 of 6	\$117,380	\$119,700
4 of 6	\$117,380	\$119,700
5 of 6	\$116,880	\$119,100
6 of 6	\$117,380	\$119,700
Total	\$704,980	\$718,800

The DOR's value indications from cost and income approaches are within 2%. Based on Mr. Wilcox's testimony, the value indication from the income approach should have been used. The DOR's administrative rules provide for consideration of all three methods of appraisal.

42.20.107 VALUATION METHODS FOR COMMERCIAL PROPERTIES

(2) If the department is not able to develop an income model with a valid capitalization rate based on the stratified direct market analysis method, the band of investment method or collect sound income and expense data, the final value chosen for ad valorem tax purposes will be based on the cost approach or, if appropriate, the market approach to value. The final valuation is that which most accurately estimates market value.

The DOR has generated a value indication from the income approach for the property, hence, an income model must exist. The appraiser elected not to provide the income model for support for the value indication from the cost approach. Regardless, the value indication from the income approach is within 2% of the cost approach and no supporting documentation was presented, i.e. the income model. Therefore, the Board will not consider the market value indication from the income approach.

Mr. Wilcox testified that in preparation for the appeal, he researched sales of duplex properties. *"...I checked and checked and there was one case on the north hills where they sold three duplexes, but each one of those duplexes of course was on its own land..."*. If these properties were not considered comparable to the subject property because each duplex is situated on its own legally defined parcel, how can the DOR appraise the subject property based on the assumption of six individual sites? It is the Board's opinion that this transaction could have offered an indication of value from the sales comparison approach when analyzing this transaction on a sale price per unit.

The DOR presented the CALP model, exhibit B, which illustrates fourteen vacant land sales. Since this exhibit does not illustrate the location or type of property, the Board ordered the DOR supplement the record with that information. The DOR's post-hearing submission included a portion of a plat map identifying the location of the sales illustrated on exhibit B. In addition, the DOR indicated that all of the sales illustrated on exhibit B were residential lots.

MCA 15-1-101. (1) *Except as otherwise specifically provided, when terms mentioned in this section are used in connection with taxation, they are defined in the following:*

- (e) *The term "comparable property" means property that:*
 - (i) *has similar use, function, and utility;*
 - (ii) *is influenced by the same set of economic trends and physical, governmental, and social factors; and*
 - (iii) *has the potential of a similar highest and best use.*

Arm 42.20.104 COMPARABLE PROPERTY (1) *The term comparable property is defined as:*

- (a) *those properties that have similar utility, similar use, similar function, and are of a similar type, and*
- (b) *comparable properties must be influenced by the same set of economic trends, and physical, economic, governmental, and social factors as the subject property, and*
- (c) *comparable properties must have the potential of a similar, if not identical, highest and best use as the subject property. By definition, commercial property shall be compared only to commercial property. Residential property shall be compared to only residential property.*
- (3) *Within the definition of comparable property in (1), the following types of property are considered comparable.*
 - (b) *Duplexes are comparable only to other duplexes..*
 - (d) *Residential city and town lots are comparable to other residential city and town lots.*
 - (e) *Commercial city and town lots are comparable to other commercial city and town lots.*

Nothing presented by the DOR suggests that the Montana

Code Annotated or DOR's own administrative rules were followed in establishing the market value for the subject property. The Board must weigh the evidence and rule based upon that evidence. It is the Board's opinion that taxpayers' sale #1 is the most comparable to the subject property, even though the transaction was outside the sale date to be considered by the DOR. As previously mentioned, the taxpayer attempted to adjust the sale for time and size. The Board will disregard those adjustments based on lack of supporting evidence. The unadjusted sale price for taxpayers' sale #1 is \$1.28 per square foot. It is the opinion of the Board that the subject three-acre parcel be valued at \$1.28 per square foot:

	130,680	square feet (3 acres x 43,560 square feet)
X	\$ 1.28	per square foot
	<u>\$167,270</u>	land value

CONCLUSIONS OF LAW

1. The State Tax Appeal Board has jurisdiction over this matter. **§15-2-301 MCA.**

2. **§15-8-111, MCA. Assessment - market value standard - exceptions.** (1) All taxable property must be assessed at 100% of its market value except as otherwise provided.

3. **15-2-301, MCA, Appeal of county tax appeal board decisions.** (4) In connection with any appeal under this section, 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.

4. It is true, as a general rule, that the appraisal of the Department of Revenue is presumed to be correct and that the taxpayer must overcome this presumption. The Department of Revenue should, however, bear a certain burden of providing documented evidence to support its assessed values. (Western Airlines, Inc., v. Catherine Michunovich et al., 149 Mont. 347, 428 P.2d 3, (1967)).

5. The Board finds that the evidence presented supports the value be modified.

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ORDER

IT IS THEREFORE ORDERED by the State Tax Appeal Board of the State of Montana that the subject property shall be entered on the tax rolls of Missoula County by the Assessor of that county at the 1999 tax year value of \$167,270 for the land. The appeal of the taxpayer is therefore granted in part and denied in part and the decision of the Missoula County Tax Appeal Board is modified.

Dated this 7th day of April, 1999.

BY ORDER OF THE
STATE TAX APPEAL BOARD

GREGORY A. THORNQUIST, Chairman

(S E A L)

JAN BROWN, Member

JEREANN NELSON, Member

NOTICE: You are entitled to judicial review of this Order in accordance with Section 15-2-303(2), MCA. Judicial review may be obtained by filing a petition in district court within 60 days following the service of this Order.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 7th day of April, 2000, the foregoing Order of the Board was served on the parties hereto by depositing a copy thereof in the U.S. Mails, postage prepaid, addressed to the parties as follows:

Patrick G. & Judy R. McDonald
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