

BEFORE THE STATE TAX APPEAL BOARD  
OF THE STATE OF MONTANA

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BILLINGS HOTEL & CONVENTION	)	
CENTER, INC.,	)	DOCKET NO.: PT-2003-113
	)	
Appellant,	)	
	)	
THE DEPARTMENT OF REVENUE	)	FACTUAL BACKGROUND,
OF THE STATE OF MONTANA,	)	CONCLUSIONS OF LAW,
	)	ORDER and OPPORTUNITY
Respondent.	)	FOR JUDICIAL REVIEW

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The above-entitled appeal was heard on October 27, 2004, in Billings, Montana, in accordance with an order of the State Tax Appeal Board of the State of Montana (Board). The notice of the hearing was duly given as required by law. The appellant was represented by Jeff Muri, owner, and Chuck Morgan, representative (Taxpayer). The Taxpayer presented testimony in support of the appeal. Appraiser Vicki Nelson and Sheri Dede, manager, represented the Respondent, Department of Revenue (DOR). The DOR presented evidence and testimony in opposition to the appeal.

The duty of this Board is to determine the appropriate market value for the property based on a preponderance of the evidence. Testimony was taken from both the Taxpayer and the DOR, and exhibits from both parties were received. The Board allowed the

record to remain open for a period of time for the purpose of receiving post-hearing submissions by both parties.

The Taxpayer is the Appellant in this proceeding and therefore has the burden of proof. 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)).

The Board upholds the decision of the Yellowstone County Tax Appeal Board.

#### **FACTUAL BACKGROUND**

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

Land and improvements located on Tract 2B, Certificate of Survey 1191 Amended. 1223 Muldowney Lane, City of Billings, County of Yellowstone, State of Montana.  
(Geocode #: 03092717307030000, Assessor Code D018990).

3. The DOR's original 2003 value was \$416,386 for the land and \$4,481,729 for the improvements (Appeal Form).
4. The taxpayer filed an AB-26 property review form with the DOR on August 18, 2003. At that time, the Taxpayer provided the DOR with actual income/expense data, which was used to establish a new market value. The land value remained at \$416,386 but the improvement value was reduced to \$4,125,223. (Ex's. A & D).
5. Based on that revised market value, the Taxpayer filed an appeal with the Yellowstone County Tax Appeal Board on December 30, 2003, requesting an improvement value of \$2,783,614, citing the following reasons for appeal:

We feel the increase in the land and building values is too high. They went from \$2,851,209 to \$4,898,115. Most importantly the building value went from \$1,997,800 - \$4,481,729.
6. In its March 17, 2004 decision, the county board denied any reduction in value.
7. The Taxpayer then appealed that decision to this Board on March 23, 2004, citing the following reason for appeal:

Actual Purchase Price – arms length transaction was \$3,200,000 in January 2000.
8. The property is better known as the Billing Hotel and Convention Center. The property is a full service

facility with 235 rooms and suites. The property also offers the following amenities (DOR Ex. B):

- Restaurant
- Lounge/casino
- Indoor swimming pool with water slides
- Hot tub
- Laundry & valet services
- Meeting rooms & convention center

#### **TAXPAYER'S CONTENTIONS**

The market value that is being sought by the Taxpayer is the purchase price of \$3,200,000. The Taxpayer asserts that this purchase meets the statutory requirement of MCA §15-8-111. ***Assessment -- market value standard -- exceptions.*** (1) *All taxable property must be assessed at 100% of its market value except as otherwise provided.* (2) (a) *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 to sell and both having reasonable knowledge of relevant facts.*

Taxpayer Exhibit #1 is page 3 of the purchase agreement. Summarized, this page indicates that the purchase price of the property was \$3,500,000. Mr. Morgan testified that approximately \$200,000 of the \$3,500,000 represents the value attributable to the liquor license.

Mr. Morgan testified to three Billings motel sales:

<u>Property</u>	<u>Sale Date</u>	<u>Sale Price</u>	<u>Original DOR Value</u>	<u>Adjusted DOR Value</u>
Townhouse Inn	6/1/03	\$399,000	\$609,400	\$316,078
Esquire Inn	1/15/02	\$800,000	\$1,312,100	\$600,000
	Additional lot - \$50,000 & Personal Property - \$270,000			
Lewis & Clark Inn		\$515,000	\$766,500	\$602,808
	New owner made capital improvements of approximately \$120,000			

The purpose for the presentation of motel sales is not about comparability to the subject, but rather, the DOR willingness to recognize an "arm's-length" transaction, and adjust the market value accordingly. With respect to the subject property, the DOR gave little consideration to the sales price.

Subsequent to the January 2000 purchase of the property, the Taxpayer made improvements in the form of a new lobby and entrance canopy at a cost of approximately \$100,000 to \$200,000. It was also testified that, after the purchase, an investment of approximately \$800,000, was invested into the property in the form of personal property or room renovation.

**DOR'S CONTENTIONS**

DOR Exhibit A is the property record card (PRC) for the subject property. Summarized, this exhibit and DOR testimony illustrates the following:

**Land**

11.942 Acres

**Improvements**

Year Built - 1972

Quality Grade - Average

Year Remodeled - 2000

Number of rooms - 238  
 Appraisal methodology – income approach  
 Total property value - \$4,541,609

Ms. Nelson testified that the DOR recognized the sale as being an "arms-length" transaction. At the time of the sale, the property was considered to be in need of repair and upgrades. The purchase price of \$3,500,000 reflected the condition of the property at the time of the sale. The property has since been improved with room renovations, lobby renovation, and a new entrance canopy. Therefore, the condition of the property at the time of the sale is not a true reflection of the property at the date of the DOR's assessment.

Exhibit E is the income data that was provided to the DOR during its AB-26 review. Because the taxpayer was willing to provide actual income and expense data for years 2000 and 2001, the DOR developed its income approach based upon this information.

Exhibit F is the DOR's income approach (direct capitalization) that established a total property value of \$5,023,500:

Adjusted Base Rate		\$58.86
Number of Units	X	238
Number of Days	X	365
Potential Gross Income (PGI)	=	5,113,168
Occupancy Predicted	X	56%
Effective Gross Income (EGI)	=	2,863,374
Less: Expenses of 80%	-	(2,290,699)
Net Operating Income (NOI)	=	572,675

Income Capitalization

Equity Ratio	9.9%
Effective Tax Rate	1.5%
Total Capitalization Rate (OAR)	11.4%

Total Property Value (NOI / OAR)		
\$572,675 / .114	=	5,023,500
Less: Personal Property	-	(481,891)
Value Attributed to the Real Estate	=	4,541,609

The DOR in Exhibit G compares, on a price per room basis the subject with other Billings hotel/motel property. In addition, the DOR has made the same comparison to five sales and one listing. Summarized, this exhibit illustrates the following:

#	Property	Location	Desc.	Yr. Built	# of Units	Quality	DOR Value	Unit Value
1	Billings Hotel & Convention Center	Blgs	Full Service	1972	238	Average	\$4,541,609	\$19,082
2	Howard Johnson	Blgs	Lmtd. Service	1992	170	Average	\$4,073,332	\$23,961
3	Ponderosa Inn	Blgs	Full Service	1966	132	Average	\$2,778,362	\$21,048
4	Ramada Lmtd.	Blgs	Lmtd. Service	1978	79	Average	\$1,923,443	\$24,347
5	Travel West Inn	Blgs	Lmtd. Service	1961	38	Average	\$743,758	\$19,573
6	Come On Inn	Blgs	Lmtd. Service	1994	80	Good	\$3,173,000	\$39,663
7	Northern Hotel	Blgs	Full Service	1941	160	Good	\$5,843,816	\$36,524
8	Quality Inn Homestead	Blgs	Full Service	1986	119	Good	\$4,376,942	\$36,781
9	Holiday Inn	Blgs	Full Service	1972	317	Good	\$10,080,392	\$31,799
10	Sheraton Hotel	Blgs	Full Service	1980	282	Good	\$12,596,821	\$44,670

SALES & LISTING					
	Location	Desc.	Sale Date	Sale Amount	Unit Value
1	Billings	Full Service	Listing	\$3,100,000	\$23,485
2	Billings	Lmtd. Service	Nov - 01	\$900,000	\$23,684
3	Great Falls	Full Service	Dec - 97	\$2,739,900	\$26,094
4	Kalispell	Full Service	Apr - 98	\$9,600,048	\$44,037
5	Bozeman	Full Service	Oct - 03	\$2,100,000	\$41,176
6	Miles City	Full Service	May - 02	\$1,908,800	\$36,708

Ms. Nelson testified that the capitalization rate of 9.9% was established for hotel/motel properties statewide. The reason the DOR had to expand its analysis on a statewide basis was due to lack of sales and income/expense information for hotel/motel properties. It has been the experience of the DOR that buyers and sellers of these types of properties are reluctant to share income and expense data. The DOR also made the distinction in the development of capitalization rates based upon the quality of the facility, franchise affiliation, and services provided.

DOR Exhibit H contains the information that was used to develop the income approach model for the full service facilities. The nine properties listed are located in various cities across Montana. The significant information from this exhibit is the average daily room rates, occupancy rates, and total expenses. It is the DOR's opinion that the income approach for the subject, exhibit F, is supported by this data.

DOR Exhibit I is a document that depicts data with respect to four limited service motel sales. The emphasis of this exhibit is the DOR's development of an overall capitalization rate. Summarized, this exhibit illustrates the following:



Location	# Rooms	Sale Date	Quality Grade	Net Income	Sale Price	Overall Rate	Price Per Unit
Billings	30	11/30/01	Average	\$104,917	\$900,000	11.66%	\$23,684
Seeley Lake	10	3/1/01	Average	\$27,610	\$349,900	7.89%	\$34,990
Lake County	10	6/25/01	Average	\$27,610	\$250,000	11.04%	\$25,000
Toole County	52	5/1/01	Average	\$143,571	\$1,100,000	11.25%	\$21,154

The DOR testified that the overall capitalization rate (OAR) illustrated above included the component for real estate taxes. This was determined to be approximately 1.7% of the OAR. The DOR determined the capitalization rate for the subject to be 9.9%, with an effective tax rate (ETR) of 1.5%. Based on the DOR's post hearing submission, the ETR was determined by multiplying the 2001 mill levy of 422.95 by the 2001 tax rate of 3.543 (.42295 X .03543 = 1.5%). The OAR for the subject was determined to be 11.4%.

DOR exhibit J is a current listing for the Ponderosa Inn located in Billings. This listing suggests the following:

<u>Sale Price</u>	<u># Of Units</u>	<u>\$ Per Unit</u>
\$3,100,000	130	\$23,846
<u>Net Operating Income</u>	<u>Sale Price</u>	<u>Suggested OAR</u>
\$374,672	\$3,100,000	12.1%

#### BOARD DISCUSSION

When questioning the Taxpayer with regards to the purchase of the property, he indicated that an independent fee appraisal was obtained for mortgage financing purposes. The Board requested that a copy be provided as a post-hearing submission as support for the value that is being requested. The Taxpayer responded by letter

dated November 12, 2004, that a copy of this report could not be located, and, therefore, could not be made available.

The subject property was purchased in January of 2000 for \$3,500,000. Included in that purchase was a liquor license, personal property, and real property. Mr. Morgan testified that the liquor license carried a value of approximately \$200,000. The DOR did not dispute this amount, nor was any evidence presented to suggest anything different. Personal property, i.e. room furnishings, restaurant equipment, dining furniture, office equipment, maintenance equipment, etc. was also included in the purchase price. Personal property is taxed as Class 8 property at 3% of its market value pursuant to MCA §15-6-138.

Subsequent to the purchase, the Taxpayer testified that upgrades to the property were made in the form of capital improvements along with renovations to the rooms. This is a clear admission that the property is not the same as when it was purchased in 2000. It's apparent that new ownership and management decisions to make physical changes to the property have produced a new indication of value.

When the Taxpayer received the 2003 assessment notice, he met with the DOR to discuss its value determination. At that point, the Taxpayer shared with the DOR appropriate income and expense

data that was considered in developing the current value (Exh. E & F). It is the Board's opinion that the DOR's income model (Exh. F) has properly considered the income and expense data submitted by the Taxpayer in arriving at a net operating income (NOI). The next step in the income approach is capitalizing the NOI. The DOR testified that its capitalization rate of 9.9% was supported by the sales listed on Exhibit I. The DOR then added the effective tax rate of 1.5% to the 9.9%, to arrive at an overall rate of 11.4%. The Taxpayer and the Taxpayer's representative questioned the validity of the DOR's overall rate, but provided no support for an alternative percentage. In fact, the fee appraisal that could not be provided could have suggested an alternative capitalization rate for this property. Based upon what this Board has been presented, the DOR's 11.4% overall capitalization rate is the best evidence. The DOR's total indication of value from the income approach is \$5,023,500. Because the income approach values the entire property, it is necessary to extract a value attributed to the personal property. The amount of personal property that was deducted was the amount that was reported to the DOR by the taxpayer. In addition, for assessment purposes, the DOR attributed a portion of the value to the land:

Personal Property	\$ 481,891
Land	\$ 416,386
Improvements	\$4,125,223
Total Value	\$5,023,500

Mr. Morgan presented three motel sales and indicated that the DOR modified the 2003 appraised values for those properties based upon those sales prices. In this case, Mr. Morgan asserts that the DOR has ignored the sale for the subject property, therefore creating inequitable treatment between similar property and taxpayers. The Board does not view it this way. In January of 2000, when the taxpayer purchased the property, the best indication of value was \$3,500,000. It was testified that considerable changes, i.e. management and renovations were made subsequent to the purchase. These occurrences could suggest a different indication of market value. In fact, the DOR's income approach illustrates that the value of the property has increased. In Albright v. Montana Department of Revenue, 281 Mont. 196,933 P.2d 815., the Court held that, "For the valuation of commercial property, CAMAS produces a cost estimate and, in some instances, an income estimate. The income approach to valuation is the preferred method of valuation of commercial properties in Montana." For this property and this appeal, it is the Board's opinion that the DOR has provided sufficient evidence to support its value determination from the income

approach.

This Board must evaluate the evidence that it has been presented and issue an opinion of value based upon that evidence. It is the opinion of this Board that the appraisal derived by the DOR, from the income approach to value, is the best indication of value for this particular commercial property.

#### 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. 15-6-134. Class four property -- description -- taxable percentage. (1) Class four property includes: (g) (i) commercial buildings and the parcels of land upon which they are situated;
4. 15-6-138. (*Temporary*) Class eight property -- description -- taxable percentage. (g) furniture, fixtures, and equipment, except that specifically included in another class, used in commercial establishments as defined in this section;
5. *Western Airlines, Inc., v. Catherine Michunovich et al.*, 149 Mont. 347, 428 P.2d 3, (1967).

6. 15-7-111. Periodic revaluation of certain taxable property.  
(3) Beginning January 1, 2001, the department of revenue shall administer and supervise a program for the revaluation of all taxable property within classes three, four, and ten. A comprehensive written reappraisal plan must be promulgated by the department. The reappraisal plan adopted must provide that all class three, four, and ten property in each county is revalued by January 1, 2003, and each succeeding 6 years
7. Albright v. Montana Department of Revenue, 281 Mont. 196,933 P.2d 815.
8. The appeal of the Taxpayer is hereby denied and the decision of the Yellowstone County Tax Appeal Board is upheld.

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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 Yellowstone County by the local Department of Revenue office at the land value of \$416,386 for the land and \$4,125,223 for the improvements. The decision of the Yellowstone County Tax Appeal Board is upheld.

Dated this 17th day of February 2005.

BY ORDER OF THE  
STATE TAX APPEAL BOARD

( S E A L )

\_\_\_\_\_  
GREGORY A. THORNQUIST, Chairman

\_\_\_\_\_  
JERE ANN NELSON, Member

\_\_\_\_\_  
JOE R. ROBERTS, 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 17th day of February, 2005, 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:

BHCC, Inc.  
1223 Mallowney Lane  
Billings, Montana 59101-6301

Chuck Morgan  
1161 Trenton Street  
Billings, Montana 59105

Ms. Vicki Nelson, Appraiser  
Yellowstone County Appraisal Office  
175 N. 27<sup>th</sup> St, Suite 1400  
Billings, MT. 59107-5013

Mr. Elwood Hannah, Chairman  
Yellowstone County Tax Appeal Board  
2216 George Street  
Billings, MT. 59102

Office of Legal Affairs  
Department of Revenue  
Mitchell Building  
Helena, MT 59620

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DONNA EUBANK  
Paralegal