

BEFORE THE STATE TAX APPEAL BOARD
OF THE STATE OF MONTANA

BLOCK 350 LIMITED)
PARTNERSHIP,)
Appellant,) DOCKET NOS. PT-2003-
) 100 and PT-2003-101;
) PT-2003-103 through
-vs-) 106
)
THE DEPARTMENT OF REVENUE) FACTUAL BACKGROUND,
OF THE STATE OF MONTANA,) CONCLUSIONS OF LAW,
Respondent.) ORDER and OPPORTUNITY
) FOR JUDICIAL REVIEW
)

The above-entitled appeal was heard on July 13, 2004, in the City of Great Falls, in accordance with an order of the State Tax Appeal Board of the State of Montana (the Board). The notice of the hearing was duly given as required by law.

Block 360, Limited Partnership, (the Taxpayer) represented by Richard Bennett, Agent and Raymond Young, Certified Public Accountant, presented testimony in support of the appeal. The Department of Revenue (DOR), represented by Chuck Pankratz, Region II Manager and Richard Dempsey, Appraiser, presented testimony in opposition of the appeal.

The duty of the Board is to determine the market value of the taxpayer's property based on the preponderance of the evidence. The State of Montana defines "market value" as **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 a 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 a reasonable knowledge of relevant facts.

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).

Based on the evidence and testimony, the Board finds that the appropriate value for the land is \$2.50 per square foot (SF), or \$243,750. But the improvements, which were not being appealed by the taxpayer, are modified to \$956,250. The total value of the property is \$1,200,000 as set forth in the following opinion.

STATEMENT OF THE ISSUE

The Taxpayers dispute the DOR's determination of land value of \$6.10 per square foot, or a total value of \$594,750.

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 the opportunity to present evidence, oral and documentary.

2. The subject property is Bennett Motors, with a sales and service facilities located in the downtown area of Great Falls, Montana.

3. The subject property(s) are described as follows:

<u>Docket #</u>	<u>Lots</u>	<u>Block</u>	
PT-2003-100	6 & 7	375	Original Townsite, Great Falls, Montana
PT-2003-101	1 & 2	360	Original Townsite, Great Falls, Montana
PT-2003-102	6 & 7	360	Original Townsite, Great Falls, Montana
PT-2003-103	8, 9 & 10	360	Original Townsite, Great Falls, Montana
PT-2003-104	11 & 12	360	Original Townsite, Great Falls, Montana
PT-2003-105	13 & 14	360	Original Townsite, Great Falls, Montana

4. The DOR established the following values for the subject property for the current appraisal cycle:

Docket #	Land Value	Land (\$/SF)	Improvement Value	Total Value
PT-2003-100	\$91,500	\$6.10	\$36,400	\$127,900
PT-2003-101	\$91,500	\$6.10	\$269,300	\$360,800
PT-2003-102	\$91,500	\$6.10	\$42,100	\$133,600
PT-2003-103	\$137,250	\$6.10	\$315,800	\$453,050
PT-2003-104	\$91,500	\$6.10	\$10,500	\$102,000
PT-2003-105	\$91,500	\$6.10	\$9,100	\$100,600
Total Values	\$594,750	\$6.10	\$683,200	\$1,277,950

5. The Taxpayer appealed the DOR's land value determination to the Cascade County Tax Appeal Board (CTAB) requesting the value be reduced to:

Docket #	Land Value	Land (\$/SF)	Improvement Value	Total Value
PT-2003-100	\$37,400	\$2.50	\$36,400	\$73,800
PT-2003-101	\$37,400	\$2.50	\$269,300	\$306,700

PT-2003-102	\$37,400	\$2.50	\$42,100	\$79,500
PT-2003-103	\$56,250	\$2.50	\$315,800	\$372,050
PT-2003-104	\$37,400	\$2.50	\$10,500	\$47,900
PT-2003-105	\$37,400	\$2.50	\$9,100	\$46,500
Total Values	\$243,250	\$2.50	\$683,200	\$926,450

6. The CTAB denied the Taxpayer's appeal and upheld the DOR's total land value determination of \$594,750 or \$6.10 per square foot.

7. The Taxpayer appealed that decision to the STAB requesting the total land value for the subject property be set at \$243,250 or \$2.50 per square foot.

TAXPAYER'S CONTENTIONS

It is the position of the Taxpayer that the valuation of the land is a key element in the future of the subject's business operation. The valuation of the land as determined by the DOR at \$6.10 per square foot is not reflective of the true market value (Exhibit #3). With real estate taxes being a fixed cost, it's imperative that one scrutinizes the accuracy when operating in competitive markets, as the subject property is attempting to do. The Taxpayer believes that the subject improvements are reasonably assessed.

Taxpayer exhibit #2 is a plat map illustrating the location of the subject property.

Taxpayer exhibit #3 is the property record cards (PRC's) for the subject parcels.

Taxpayer exhibit #4 is data with reference to employment, population, housing, and traffic counts for Cascade County.

Taxpayer exhibit #5 is a copy of an independent fee appraisal dated December 21, 1999, with an effective date of value of November 16, 1999. On page 12 of the appraisal report, the appraiser referenced four comparable land sales that reflect a range from \$1.91 to \$4.32 per square foot (SF). The appraiser determined the subject's 97,500 square feet to be valued at \$2.50 SF, or \$244,000, rounded.

Taxpayer exhibit #6 is a document titled, "Sellers Closing Statement", between School District #1, Cascade County (grantor) and Golden Triangle Community Mental Health Center, LLC (grantee). The closing date is illustrated to be as of November 28, 2003. The purchase price for the property is reported to be \$390,000. The majority of the exhibit is an "Executive Summary", created by Philip Rowan, real estate appraiser. It was reported that the purchase included a 52,500 square foot site with paving, landscaping, a three-story school building with approximately 34,136 of gross building area. Mr. Rowan estimated the site to have a value of \$130,000, or \$2.50 SF. This property is in the immediate vicinity of the subject property.

Taxpayer exhibit #7 is a document titled, "Buyer's Closing Statement", between Block 360 LLP/Triangle Associates, Inc.

(grantee) and Irene G. Russell (grantor). The closing date is illustrated to be as of March 15, 2004. The purchase price for the property is reported to be \$175,000. The Taxpayer attached the DOR's property record cards (PRC's) that were subject to the transaction. These PRC's illustrate that the sale consisted of 22,500 SF of land, paving, 1,412 SF Service Station structure and a 7,720 SF retail building. Of the purchase price of \$175,000, the Taxpayer allocated \$56,250 to the land and \$118,750 to the improvements. The land allocation equates to \$2.50 SF.

Taxpayer exhibit #8 is sales data provided to the Taxpayer by a local real estate broker. Summarized, this exhibit illustrates the following:

Location	Date of Sale	Purchase Price	Building (SF)	Land (SF)	Land - % of Purchase	Allocated Land Value - \$/SF
1239 9 th Ave. S.	5/29/03	\$345,000	7,414 SF	22,500 SF	10%	\$34,500 \$1.53 SF
2417 Vaughn Rd.	4/30/03	\$100,500	1,276 SF	64,500 SF	20%	\$20,100 \$.31 SF
714 Central Ave.	6/12/03	\$42,500	1,250 SF	\$3,750	10%	\$4,250 \$1.13 SF
1900 River Dr. N.	5/15/03	\$240,000	None	129,373 SF	100%	\$240,000 \$1.86 SF

Taxpayer exhibit #9 are pages from the publications with reference to employment and economic growth for Cascade County.

Taxpayer exhibit #10 is an illustration of the 1990, 1997, and the 2003 values for lots 13 & 14, block 360. This document depicts the following increases over the years:

1990 Value	1990 Value (SF)	1997 Value	1997 Value (SF)	% Increase	2003 Value	2003 Value (SF)	% Increase

\$40,000	\$2.67	\$57,500	\$3.83	43%	\$91,500	\$6.10	59%
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The Taxpayer asserts that documentation presented suggests that the proper land value is \$2.50 SF or \$243,750.

DOR' S CONTENTIONS

DOR exhibit A is a listing of the vacant land sales that were used to establish the land value of \$6.10 SF. Summarized, the exhibit illustrates the following:

Sale #	Sale Date	Sale Amount	Lot Size	Time Adjusted Sales Price (SF)
1	Feb-97	\$100,000	15,000	\$8.24
2	Feb-97	\$50,000	7,500	\$8.24
3	Sep-00	\$30,000	7,500	\$4.26
4	Jul-96	\$30,000	7,500	\$5.06
5	Oct-97	\$38,000	7,500	\$6.10
6	Dec-97	\$50,000	7,500	\$7.97
7	Feb-00	\$59,000	11,250	\$5.73
	Current Base Size (SF)		7,500	
	Base Rate Per SF		\$6.10	
	Residual Per SF		\$6.10	
	Monthly Rate of Change		0.40%	

The DOR testified that the monthly rate of change was established by analyzing paired sales, or in other words, the same property that has sold more than once leading up to the current appraisal cycle. It was also testified that the monthly rate of change recognized residential properties, as well as commercial.

DOR exhibit C is a map depicting the location of the sales illustrated on exhibit A, along with the subject property.

DOR exhibit B is an illustration showing the various values before the Board. Summarized, this exhibit illustrates the following:

GEO-CODE	2003 TOTAL VALUE	DOR IMPROVEMENT VALUE	DOR LAND VALUE	LAND VALUE REQUESTED	TOTAL VALUE REQUESTED	% OF REDUCTION REQUESTED	REQUESTED VALUE PER SQUARE FT.
3015-12-1-16-14-0000	\$360,800	\$269,300	\$91,500	\$37,500	\$306,800	59.02%	\$2.50
3015-12-1-16-09-0000	\$133,600	\$42,100	\$91,500	\$37,500	\$79,600	59.02%	\$2.50
3015-12-1-16-07-0000	\$453,050	\$315,800	\$137,250	\$56,250	\$372,050	59.02%	\$2.50
3015-12-1-16-04-0000	\$102,000	\$10,500	\$91,500	\$37,500	\$48,000	59.02%	\$2.50
3015-12-1-16-01-0000	\$100,600	\$9,100	\$91,500	\$37,500	\$46,600	59.02%	\$2.50
3015-12-1-09-10-0000	\$127,900	\$36,400	\$91,500	\$37,500	\$73,900	59.02%	\$2.50
	\$1,277,950	\$683,200	\$594,750	\$243,750	\$926,950	59.02%	\$2.50
Value from Mr. Ferro's 1999 appraisal		\$1,200,000					
Land value		\$244,000					
Improvement value		\$956,000					
Difference from assessed value		\$77,950					
% of difference over 2 years		6.50%	December 1999 - January 2002				
Total value requested		\$926,950					
Difference from Mr. Ferro appraisal		\$273,050					

The DOR notes that, when comparing its January 1, 2002 appraisal of \$1,277,950 to the November 16, 1999 independent fee appraisal (exhibit 5) at \$1,200,000, it suggests a difference of \$77,950 or 6.50% in just over two years. It's the DOR's opinion that its total value for the property is supported.

BOARD'S DISCUSSION

The Taxpayer's appeal was precipitated by the DOR statewide reappraisal pursuant to **MCA §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. (emphasis supplied)

The DOR identified seven vacant land sales that were similarly situated to the subject property. They all are located in DOR neighborhood #008-7. Five of the sales consist of 7,500 SF, one consists of 11,250 SF, and one consists of 15,000 SF. The subject property has a total of 97,500 SF. Based on the DOR's exhibits and testimony, a property of 7,500 SF has the same value per square foot as a property with 97,500 SF. There is nothing in the record that suggests that this is the case. The only way that this can be proven is by analyzing sales of large pieces of property, such as the subject. The Board certainly understands that there is limited sales information to be had, especially in an area of town that has very little vacant land available. In the independent fee appraisal, the appraiser identified four land sales, none of which were located as close to the subject property as the DOR's sales, but consist of larger tracts of land. This very well may be the reason the fee appraiser expanded his search for comparable vacant land sales.

The Taxpayer presented the Board with a real estate brokers compilation of sales information. There is nothing in the record that provides support for the allocation of land value based on a percentage of the total sale price of the transaction.

The Taxpayer did present the Board with supporting documentation as to a proper land value for the subject property in two separate documents. The first is the limited analysis, exhibit 6, the sale of the vacant school district property. Here the appraiser established a value of \$2.50 per square foot for the property. The second, and most convincing evidence, is the independent fee appraisal, exhibit 5. The Administrative Rule of Montana provide for consideration of independent fee appraisals.

ARM 42.20.455 CONSIDERATION OF INDEPENDENT APPRAISALS AS AN INDICATION OF MARKET VALUE

(1) When considering any objection to the appraisal of property, the department may consider independent appraisals of the property as evidence of the market value of the property. (emphasis supplied)

It was testified that prior to this hearing the DOR was only presented a portion of the fee appraisal. For the DOR to give consideration of adopting a value from a fee appraisal, it's imperative that the document be presented in its entirety. As previously noted, the value established for the subject property was \$2.50 SF.

The DOR's seven vacant land sales that were similarly situated to the subject property were also adjusted .4% per month from the time of sale. These sales occurred from 1996 through 2000. The DOR concluded that a .4% per month adjustment for time was appropriate after reviewing paired sales data. It was also reported that residential land sales were included in the analysis for determining an appropriate adjustment factor. The DOR could not identify how many residential or commercial sales were used to establish the .4% factor. It is the Board's opinion that using residential sales data in establishing a time adjustment factor for a commercial property in the downtown sector of Great Falls is inappropriate. For the DOR to properly apply a time adjustment factor it, it should, if possible, identify comparable property. **MCA §15-1-101. Definitions.** (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 has the potential of a similar highest and best use.*

The Taxpayer only appealed the DOR's land valuation. It is obvious that the DOR's valuation for the land at \$6.10 SF is excessive. Based upon exhibits presented, the appropriate valuation for the land should reflect \$2.50 SF. It should be noted that the Taxpayer cannot pick and choose what portions of the fee appraisal should be applied and what should be ignored.

The total value for the subject property pursuant to the fee appraisal is \$1,200,000. This is \$77,950 less than the DOR's total value indication. Based on the dates of value, November 1999 for the fee appraisal, and January 2002 for the DOR, it suggests an increase of 6.5%, or .25% per month.

On page 6 of the fee appraisal, the appraiser notes "...The general trend for the central business district is considered to be static." (emphasis supplied)

The DOR's date of value is approximately two years later than the fee appraisal. As previously noted, this suggests a 6.5% increase. Although this is considered a small increase, the record is silent with respect to any market data to support this.

There are typically three methods utilized within the appraisal process: the cost, sales and income approaches to value. As noted by the appraiser on page 17:

The three approaches indicate the following value estimates for the subject property:

COST APPROACH	\$1,135,000
SALES COMPARISON APPROACH	\$1,211,000
INCOME APPROACH	\$1,200,000

Primary consideration has been given to the Income Approach in arriving at a value estimate as it is well supported by market data. This approach analyzes a property's net income-producing capabilities, which is an important measure of the property's profitability to its owner. Secondary consideration has been given to the Sales Comparison Approach. This approach is weakened because of the date of sale adjustments that were necessary to all four sales. The Cost Approach has been given limited consideration as this approach is not a primary means of valuing income-producing properties. Furthermore, the difficulties in estimating accrued depreciation for the existing improvements weakens this approach.

Typically when valuing a property by the income approach, the appraiser does not segregate a value to the land and the improvements. It is the total property that is generating revenue. That is the case with the fee appraisal. The appraiser identified what the total net operating income would be for the entire property. The DOR, on the other hand, in its assessment process must assign a value to the land and improvements. There are situations when the value of the total property must be considered rather than just the components. Although there are six separate legal descriptions for the subject property, which comprises a variety of improvements and 97,500 SF of land, it is the opinion of the Board that the best value indication for the property is \$243,750 for the land and \$956,250 for the improvements, for a total property value of \$1,200,000. This Board is not concerned with how the DOR assigns the improvements their respective values, as long as the total improvement value does not exceed \$956,250.

CONCLUSIONS OF LAW

1. The Board has jurisdiction over this matter in accordance with Section 15-2-301, MCA.
2. MCA §15-8-111. Assessment - market value standard - exceptions.
3. MCA §15-1-101. Definitions.

4. MCA §15-7-111. Periodic revaluation of certain taxable property.
5. The Board shall give an administrative rule full effect unless the Board finds a rule arbitrary, capricious or otherwise unlawful. Section 15-2-301(4), MCA.
6. *Western Airlines, Inc., v. Catherine Michunovich et al.*, 149 Mont. 347, 428 P.2d 3, (1967).
7. The appeal of the Taxpayer is hereby granted with respect to the valuation of the land. The values of the improvements were not appealed, but they are modified to reflect the appropriate value. The decision of the Cascade County Tax Appeal Board is modified.

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ORDER

IT IS THEREFORE ORDERED by the State Tax Appeal Board of the State of Montana that the DOR reduce the value of the land to reflect a total value of \$243,750. The improvements shall be valued at \$956,250, for a total property value of \$1,200,000.

DATED this 5th day of August, 2004.

BY ORDER OF THE
STATE TAX APPEAL BOARD

(S E A L)

GREGORY A. THORNQUIST, Chairman

JEREANN 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 5th day of August, 2004, 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:

Block 360 Limited Partnership
c/o Richard Bennett
P.O. Box 2267
Great Falls, Montana 59403-2267

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

Appraisal Office
Cascade County
300 Central Avenue
Suite 520
Great Falls, Montana 59401

Nick Lazanas
Cascade County Tax Appeal Board
Courthouse Annex
Great Falls, Montana 59401

DONNA EUBANK
Paralegal