

BEFORE THE STATE TAX APPEAL BOARD
OF THE STATE OF MONTANA

THE DEPARTMENT OF REVENUE)	DOCKET NO.: PT-1999-45
OF THE STATE OF MONTANA,)	
)	
Appellant,)	
)	
-vs-)	FACTUAL BACKGROUND,
)	CONCLUSIONS OF LAW,
RICHARD BURNETT,)	ORDER and OPPORTUNITY
)	<u>FOR JUDICIAL REVIEW</u>
Respondent.)	

The above-entitled appeal was heard on July 18, 2000, in the City of Forsyth, Montana, 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.

The Department of Revenue (DOR), represented by Appraisers Richard E. Sparks and Lee Zuelke, presented testimony in support of the appeal. The taxpayer, Richard Burnett, presented testimony in opposition to the appeal. Testimony was presented and exhibits were received. 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:

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 taxpayer is the owner of the property which is the subject of this appeal and which is described as follows:

132 lot mobile home park, Blocks 34 through 45, Section 34, Township 2N, Range 41E, Original Townsite, City of Colstrip, County of Rosebud, State of Montana. (Assessor codes #1271 through #1282).

3. For the 1999 tax year, the DOR appraised the subject property at a value of \$1,012,572 for the land.

4. On October 4, 1999, the taxpayer submitted AB-26 forms to the DOR for review of the valuation of each parcel of the subject property. The notices of results of the review were sent to the taxpayer on October 20, 1999, each stating that no adjustments were made. The reasons were stated in an "attached letter" which was not made a part of the contents of the record for this appeal.

5. The taxpayer appealed to the Rosebud County Tax Appeal Board on an undated form, received by the county board on November 23, 1999, requesting a reduction in value to \$294,266 for the land, stating:

Value too high compared to sale price.

6. In its March 10, 2000 decision, the county board approved the taxpayer's requested value of \$294,266 for the land, stating:

The Rosebud County Tax Appeal Board finds for the Appellant for the appraised value as determined by the Taxpayer in the amount of \$294,266 for the following reasons:

- 1. There was a willing buyer and a willing seller, noting that there were 2 additional legitimate bids for less money.*
- 2. It was an arms-length transaction.*
- 3. There were two (2) independent appraisals.*
- 4. No sales support for the Department of Revenue values.*
- 5. Department of Revenue gave testimony about the appraiser that was not supported.*
- 6. Colstrip is a unique situation in that the land is unstable, employment is unstable and with these poor economic conditions it has caused an economic obsolescence in the values creating an external reduction in the price of properties.*

7. The Department of Revenue appealed that decision to this Board on March 23, 2000, stating:

The nature of the proof adduced at the hearing was insufficient from a factual and a legal standpoint, to support the Board's decision.

8. The Board's decision has considered the evidence and testimony presented in PT-1999-46, DOR v. Richard Burnett, and PT-1999-47, DOR v. Richard Burnett.

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DOR'S CONTENTIONS

Mr. Zuelke testified that "there are three reasons that we think we needed to appeal this to the State Tax Appeal Board. First thing is that we believe the value they came up with is incorrect. Second is that they didn't separate the values between improvements and the land even after we requested that they do that. Third is that one of the members of the appeal board is on the board of directors of the bank who approved the loan for the property." Mr. Zuelke stated that this board member was not asked to recuse himself at the time of the county hearing, because the DOR "didn't know about it at the time of the hearing; we discussed that after the hearing."

DOR's Exhibit A is a three-page exhibit entitled "*STAB Appeals—Rosebud County July 18, 2000,*" which includes information relative to docket numbers PT-1999-46 and PT-1999-47, in addition to the present appeal. This exhibit is summarized in pertinent part as follows:

Appeal #01 A Blocks 34-45 Colstrip Original Townsite

Mobile Home Park—132 Mobile home sites on 12 city blocks within the Colstrip city limits. This appeal encompasses 23.96 acres of land area of 1,043,889 square feet valued at \$.97 a square foot. DOR value \$1,012,572. Appellant requests value of \$294,266 or \$.282/square foot.

Appealed to STAB due to 1) the appearance of conflict of interest on the part of one CTAB member who was also on the Board of Directors of the bank which is carrying the loan for this property. 2) Inequity of valuation created toward remaining taxpayers in the neighborhood of \$.688/square foot. 3) CTAB not separating the values they arrived at and attributing a portion of the total value

specifically to land and improvements on Appeal #2 and #3. 4) CTABs believe that Colstrip economy is currently slower or poorer than other communities in Southeastern Montana when in fact it is as strong or stronger than most of the comparable communities (union scale jobs, unemployment rate, etc) 5) This one sale does not make the market, particularly since this sale is invalid by virtue of its size, diversity, and atypical seller motivation. Very uncommon for apartment buildings and Mobile home courts to be sold as a package. In addition, the sheer acreage of this sale renders it invalid. Was done here only because Western Energy owned Colstrip and dumped the property when Colstrip incorporated. Western Energy was not interested in market value on this property which is evidenced by their never having tried to operate it at a profit when they owned it (page 28, paragraph 1, McFarland Appraisal), in addition to their reluctance to split the property up for the sale, apparently for simplicity reasons.

✂ Valued as vacant land due to the nature of vacant land sales in Colstrip. Most vacant land sales in Colstrip have services (Water, Sewer, Electricity, Mob Hookup) on them due to the development of Colstrip. Company town. Incorporated in 1999. Prior to that all community services were provided by CCSC Colstrip Community Services Corporation which was a subsidiary of Western Energy and Montana Power.

✂ Vacant land sales tracked by Department of Revenue for the current appraisal cycle point to a value of \$.97/square foot. All land in this neighborhood of Colstrip is valued at \$.97/square foot. Brunsvold Appraisal Service did extensive research on Colstrip land values. This research indicates a value in 1999 for vacant land in this neighborhood or \$1.06 / square foot. Vacant land sale research done by Ron McFarland in the appraisal report indicates a value in this neighborhood of \$1.30 to \$1.50 per square foot. However, he used a value of \$2,000 per acre for this appraisal report due to the size of the tract of land being offered for sale. That is a land value of \$.046 per square foot. Appellant Exhibit #2 page 27. All this research done by professionals outside the DOR indicates that our value of \$.97/ square foot is reasonable.

Colstrip Economic conditions: Ruth Springer, PPL employee.

Currently there are 356 PPL (Pennsylvania Power and Light) employees. Average salary annually \$52,000.

Downsize occurred in 1996 to a target of 400 employees by Montana Power.

John Williams-Mayor

372 Western Energy Employees

25 Rosebud Power Plant—25 employees

45 employees at Peabody Coal mine currently. This is after a downsize that occurred in fall 1999 from 140 employees.

793 total union or union scale jobs.

No infrastructure problems with water, sewer, streets etc. Infrastructure problems that do exist are streets. These problems are a result of actual age of the structure and are being addressed since the incorporation of the city.

Community survey- Colstrip May, 2000.

50% Response

74% of the respondents have lived in Colstrip for 10 years or longer. 90% own their own home. 312 mobile homes in Colstrip.

69% characterized the Colstrip economy as average or above. Of that 69%, 44% felt it was good or very good.

County Employment & Wages 1997

	Av. Annual \$:	Unemployment Rate:
Rosebud Co.	\$ 27,503	8.7%
Powder River Co.	\$ 14,787	1.9%
Fallon Co.	\$ 23,187	3.3%
Custer Co.	\$ 20,100	4.6%
Carter Co.	\$ 14,469	2.2%
Big Horn Co.	\$ 23,669	9.4%

The Board will take administrative notice of DOR Exhibit B, submitted during the second appeal (PT-1999-46), a copy of a community survey conducted by the City of Colstrip in May, 2000, to obtain residents' opinions of local issues. Approximately 840 questionnaires were mailed to all households served by the city water system, or were hand-delivered to apartments. Of those households receiving questionnaires, 427 responded, for a response rate of 51%. There are 616 males and 604 females living in the 427 households, for an average household size of 2.85 persons per household. The average age of the respondents is 43. Of the respondents, 62% of the respondents are 40-59 years old. 74% of the respondents have lived in Colstrip for 10 years

or more. Mr. Sparks said the fact that this many respondents have lived in the community for at least 10 years is an indication of economic stability. Mr. Sparks called attention to page four of the survey regarding economic development, which states that "Colstrip residents have a diverse perception of the Colstrip economy. Survey respondents characterized the Colstrip economy: 44%-Good or Very Good; 25%-Average; 31%-Fair or Poor." Mr. Sparks testified that 69% of the respondents indicated that "the economy of Colstrip is average, good or very good. Those are Colstrip residents that are telling us that they don't feel the economic condition of Colstrip is bad."

Mr. Zuelke testified that the DOR's process for setting value on the subject property is relative to the history of Colstrip. "Vacant land sales in Colstrip generally include all types of hookups that would accommodate a mobile home. The Department of Revenue's value is a land-only value on this particular property. The reason being is that virtually all of the vacant land itself in Colstrip is equipped with a mobile home hookup: sewer, water and electricity. The appraiser that was in Rosebud County at that time opted to, rather than try to come up with a means to distinguish between what value was attributed to mobile home hookup or lot improvements, the water, sewer, and electricity, just

valued all of that as vacant land. The sales that we tracked for the current cycle point to a value of 97 cents a square foot."

Mr. Zuelke testified that the subject property was valued through the cost approach rather than the income approach, because of a lack of adequate income and expense information. Mr. Sparks explained that, although the DOR sends out questionnaires in an attempt to obtain income information, they cannot compel taxpayers to return the requested information. He stated that "in order to do a good or accurate or acceptable job in mass appraisal, that information that needs to be gathered needs to be fairly substantial in order to develop a model. And in southeastern Montana, we gathered that type of information, not just for Rosebud County but for all of them. And when we compiled that, it didn't feel like we had enough information to develop an adequate income model for this property type."

DOR Exhibit B is a portion of a fee appraisal, prepared by R. E. McFarland for the First State Bank of Forsyth, of the subject property as well as the properties under appeal in docket numbers PT-1999-46 and PT-1999-47. Exhibit B includes only pages 25 through 43 of the appraisal. The entire appraisal had been submitted as Exhibit 2 in the appeal before the Rosebud County Tax Appeal Board, and is a

part of the record for this appeal. Mr. Zuelke testified that the DOR had determined a land value for the subject property of "97 cents a square foot, Brunsvold Appraisal set a value in that neighborhood of \$1.06, and the fee appraisal, Mr. McFarland's, tracked sales of between \$1.30 and \$1.50 per square foot and set value at \$2,000 an acre, which calculates to about 4.6 cents per square foot." Mr. Zuelke stated that the DOR's land value of 97 cents per square foot was determined by Bill Zard, a DOR appraiser who is no longer in Rosebud County. Mr. Zuelke testified, "It is my understanding that for the 1997 reappraisal, he didn't have enough sales to independently establish the value for those properties, so the one or two that he had indicated a value similar to what we were already carrying, so he left those values the same as they were for the 1993 assessment."

DOR's Exhibit C is a three-page print-out of computer screens showing sales in Rosebud County between 1988 and 1995. Properties included are located in Sweetgrass Acreage Tracts (undesignated neighborhood), Castle Rock Lake Subdivision (neighborhood 12), Cimarron Subdivision (neighborhood 13-1), Stillwater Subdivision (neighborhood 23), Big Timber Subdivision (neighborhood 7), Sweetgrass Subdivision (neighborhood 25), and Light Industrial Park (neighborhood 19). Mr. Zuelke stated that he believed the

sales in Sweetgrass Acreage Tract and Cimarron Subdivision, which are both located in Colstrip, were used by Mr. Zard to establish the 97 cents per square foot value. He testified that "it looked reasonable even though these aren't in the specifically same subdivision as the appellant property; they point that those values, that 97 cents, was probably a reasonable value to stay with for the 1997 reappraisal cycle...I guess that if you can't prove that it should change, if you've got evidence from the same town, and it's a small town, that the values are there or a little higher, then leave them the way they are..."

Mr. Zuelke explained that one of the problems in valuing the mobile home court was the fact that Mr. Burnett had purchased the three properties under appeal as one unit, and when the DOR values properties, they "value them as individual properties." The mobile home court consists of 23.96 acres of land situated on 12 separate blocks. Mr. Zuelke stated that, since each block has been platted and subdivided, if Mr. Burnett chose to divide the mobile home park and sell it in sections, he would not be prohibited from doing so. He was not aware of any applicable subdivision restrictions that had been implemented since Colstrip became an incorporated city. He indicated that a seller might obtain a higher price for the mobile home court

if it were divided into smaller parcels rather than sold as one large unit, but that the previous owner (Western Energy) had owned the properties "to provide living spaces for their employees which they needed to run the power plants and mines...; they had no interest in making a return on their investment for those properties..." Therefore, the DOR does not consider Western Energy to have been a "willing seller." Mr. Zuelke stated that the properties were sold at a considerable discount by being sold as one unit; and if the properties had been broken down into individual units, the sale offer might have attracted many more potential buyers. Mr. Sparks added that CCSC, Colstrip Community Services Corporation, a subsidiary of Western Energy and Montana Power, did sell mobile home lots separately for house sites in other areas of Colstrip. They were located in a different neighborhood than the subject land, and "commanded a higher value." Some of those sales are included in Exhibit C.

Although the individual property record cards indicate that there are only 128 trailer hook-ups, the property under appeal is described as having 132 hook-ups. Mr. Sparks explained that the mobile home park includes park area and open space area that is not valued and assessed for tax purposes because it is "exempt land that has been dedicated to the public." The property record cards were not submitted

as evidence by the DOR in this hearing, although they had been entered as Exhibit A in the county board hearing so are a part of the record in this appeal.

Mr. Sparks and Mr. Zuelke testified that the Department of Revenue had appealed the decision of the Rosebud County Tax Appeal Board to the State Tax Appeal Board because they believe that the county board's decision creates an inequity for the other taxpayers in Colstrip and in Rosebud County.

TAXPAYER'S CONTENTIONS

Mr. Burnett testified that he had requested a value of \$207,300 for the subject land, the amount that he had paid for it. However, he did not appeal the decision of the county tax appeal board, which had set the value at \$294,266.

Taxpayer's Exhibit 1 is a copy of the broker's sales brochure for the subject property as well as the properties under appeal in docket numbers PT-1999-46 and PT-1999-47. The brochure states that the total price for the entire property is **\$700,000** (\$7500 per apartment/\$2000 per mobile lot). Information contained in the brochure relating to the subject property in this appeal is as follows:

Mobile Home Lots

There are 132 mobile home lots included in the property offered for sale. Of these, about 30 are rented as RV units and about 12 are vacant for a vacancy rate of 17%. Rents were raised from \$65, to \$85 per month in mid-1999. Many of the lots were designed for older

and smaller mobile home designs, however, lots could be combined to accommodate the larger modern units. The mobile area features an open design, with parks etc.

It is estimated that there are 459 mobile home lots in Colstrip, of which 179 are owned and 280 are available for rent. There are around 65 units now vacant in the market, for an overall vacancy rate of 23%.

Potential rental income is projected at \$112,200 per year (110 spaces at \$85 per month). Rental trends are as follows:

	<u>1996</u>	<u>1997</u>	<u>1998</u>	<u>Potential</u>
Mobile Lot Revenue	\$89,760	\$83,256	\$77,224	\$112,200

Assuming expenses at 50% of revenue, the net income for 1998 would be \$38,600.

Mr. Burnett testified that "that broker's on multiple listing. That document was sent all over the country. It's on the internet. There was (sic) buyers that flew into Colstrip from all over the place, looking at that property. There was (sic) three bids from Colstrip. One was Steve Stephens for \$530,000, I believe. Ted Stimack bid \$600,000, and I ended up tying it up for \$660,000. There was (sic) plenty of people bidding on it...There was (sic) people from California, people from all over the country were flying in and looking at it. When they got into the nitty-gritty about the people moving out of town, and they saw those hundreds of vacant trailer spaces, it just did not look attractive." Mr. Burnett stated that "they wanted it all sold; they didn't care whether multiple buyers bought it or not. And in the case of the Larkspur Apartments, there's more than one buyer. I took a partnership on part of it; I own the rest

and the trailer court and the Cactus Apartments myself; and I'm a 50/50 owner in the Larkspur Apartments."

Mr. Burnett emphasized that he was a willing buyer and Western Energy, which is owned by Montana Power, was a willing seller in this transaction. He stated that "Montana Power four years ago decided to put everything it had on the market, to sell everything they owned. They didn't know which direction they were going." He said they were selling their plants, coal mines, gold mines, lines and services, and only planned to keep Touch America, which was a business decision. He believes that financially they could have kept this Colstrip property and let a management company continue to manage it for them. Mr. Burnett again emphasized that "a big part of my case is that it was a willing buyer and a willing seller."

Taxpayer's Exhibit 2 is a copy of the cover letter from the McFarland appraisal (DOR's Exhibit 2, Rosebud CTAB hearing). The letter, which is dated December 29, 1999, is addressed to Mr. Albert Martens, President of the First State Bank of Forsyth in Circle, Montana. As stated in the letter, the appraiser's conclusion of fair or current market value of the described land and building improvements as a whole, as of December 21, 1999, the date of the physical inspection, is **\$700,000**. In addition to an opinion of value

for the property as a whole, separate opinions of value were requested for the subject property and the properties under appeal in PT-1999-46 and PT-1999-47. Mr. McFarland's opinion of value for the mobile home park is **\$207,300**. Mr. Burnett stated that since the market analysis prepared by the broker also indicated a total value of \$700,000, he believes that "the selling price wasn't way out of line." Some of the reasons for this, according to Mr. Burnett, are that Colstrip is a unique town with no freeway, no clothing stores, and no farm supply stores; teachers are leaving; there is a continuing downslide in population and at some point Colstrip will no longer have power plants or coal mines and there will be nothing left to support the town. He does not believe that anybody would pay the same price for apartments in Colstrip as they would in Miles City or Forsyth or other areas with freeways and ongoing economic development. He indicated that because of dynamite blasting and surge pond leaking, many properties are experiencing "settling, sinking and cracking."

Mr. Burnett testified that the only improvements on the trailer court are plastic sewer and water pipes that are about 27 years old. There are no cement pads, unless persons living in the court for several years have poured their own. Most spaces have only weeds and alfalfa, and there is no

grass on even the vacant spaces. As of the present time, there are 35 vacant lots, and there were a few more at the time the appeal was filed. Mr. Burnett stated that there are 132 lots on the plat, but some are not functional because water and sewer lines had been removed, rather than repaired, by CCSC. He believes that approximately 126 of the lots have the ability to generate income. Monthly rent is \$85, and since the city has incorporated, renters now pay the \$57 monthly charge for sewer and water directly to the city rather than to include it with their rent as had been done when CCSC managed the mobile home court. Mr. Burnett rents some of the vacant lots during the summer to RV owners, who pay a daily rate of \$6. That amount includes power, as Mr. Burnett pays for the power on all spaces, in amounts varying from \$15 to \$45 monthly. He saves money on management expenses by managing the property himself.

Prior to Mr. Burnett's purchasing the property, he did not prepare an income and expense analysis to determine if it would be a profitable investment. He saw that Western Energy was losing money on it and felt that he and his sons could save money by doing the work themselves. He had lived in Colstrip for 10 years and wanted to stay in the community until he retires, he thought that the properties would provide employment opportunities for his sons, and he "got

it cheap enough where it may pay for itself over 15 years." Although Mr. Burnett has a 20-year note on the properties, he would prefer to have it paid within 15 years, and he is uncertain what the value of the property might be after that time. He anticipates that the Colstrip economy will continue to deteriorate and its population will continue to decline during the coming years.

BOARD'S DISCUSSION

The Board was presented with a unique situation in the Department of Revenue appeals on Mr. Burnett's properties, because there are three separate appeals (PT-1999-45, PT-1999-46 and PT-199-47), in which the testimony and the exhibits overlap, as the properties were purchased in one "package." The sales brochure (Exhibit 1) and the McFarland appraisal (excerpted in Exhibits 2 and B), present a total estimate of value for the entire package of the three properties, as well as individual estimates of value.

Taxpayer's Exhibit 1, the sales brochure presented by A.L. Koelzer of Business Properties, indicates a sale price for the "apartment and mobile home project" of **\$700,000**, broken down into \$7500 per apartment (PT-1999-46 and PT-1999-47) and **\$2000 per mobile lot** (the subject property in the present appeal). Taxpayer's Exhibit 2, the cover letter of the McFarland appraisal, addressed to Mr. Albert Martens,

President of the First State Bank of Forsyth, indicates a total project value of **\$700,000**, broken down as follows: Larkspur Apartments (PT-1999-46) - \$309,100; Cactus Apartments (PT-1999-47) - \$183,600; and **Mobile Home Court** (the subject property in the present appeal) - **\$207,300**. Mr. Burnett testified that he had requested a value of \$207,300, the value that he had paid for the mobile home court, according to the breakdown of values on Exhibit 2 and in the McFarland appraisal. However, the taxpayer's requested value on the appeal form is **\$294,266**, which was the value approved by the Rosebud County Tax Appeal Board and is the value before this Board. According to the AB-26 property review forms included in the appeal record, this value is the total of the amounts Mr. Burnett had paid for each of the 12 separate blocks within the mobile home park. Mr. Burnett had testified during the county board hearing that Western Energy's total asking price of \$700,000 was broken down into \$7,500 per apartment (PT-1999-46 and PT-1999-47) and \$2,000 per mobile home lot. \$2,000 per lot for 132 lots results in a total asking price of \$264,000 for the subject property. Mr. Burnett stated that he had paid \$660,000 for the total, which was 94.286 of the selling price, so "I came up with **\$195,454**, is what I actually paid for that mobile home court." (CTAB transcript, March 10, 2000, page 5.) However,

this was not the value he had requested on the appeal form. Although this Board has been presented with several different requested values by the taxpayer (\$264,000, \$207,300, \$195,454 and \$294,266), the value before the Board is that which is stated on the appeal form as the taxpayer's requested value as well as the county tax appeal board's determined value: **\$294,266.**

As the appellant, the DOR carries the burden of proof in this appeal. Steer Inc. v. Department of Revenue, 245 Mont. 470, 1990. The DOR's value on the subject property (1,043,889 sq. ft. @ \$.97 = \$1,012,572) is a land-only value, according to Mr. Zuelke, because the majority of the vacant land in Colstrip is equipped with mobile home hook-ups, including sewer, water and electricity; therefore, a previous appraiser had valued the lots as vacant land, rather than attempting to value the utility hook-ups as separate improvements. The DOR valued the land at 97 cents a square foot, but initially did not present any sales to the Board to support this value. Stating that "if it would help the Board in rendering their decision,..." Mr. Zuelke presented Exhibit C, computer print-outs of sales in Rosebud County, but not in the subject neighborhood. He thought that the sales on page three of the exhibit, in the Sweetgrass Acreage Tract and Cimarron Subdivison, both in Colstrip, had

been used by the previous DOR appraiser to determine the value of 97 cents a square foot.

Mr. Zuelke testified that Brunsvold Appraisal had established a value of \$1.06 per square foot for land in the subject neighborhood. However, he did not present the appraisal as evidence, nor had he requested that Mr. Brunsvold testify in this appeal. Mr. McFarland's appraisal (Exhibit B, page 27) stated that he had tracked sales in the subject neighborhood and found commercial and residential lots selling for \$1.30 to \$1.50 a square foot. Based on this, he assigned a value of \$2,000 per acre to the subject's acreage, stating that, *"None of the land qualities on any of the sales found and researched were considered similar to the subject, mostly because of size. Several small tract sales outside Colstrip city limits indicated values of \$1,000 to \$1,500 per acre. Without benefit of better data, a \$2,000 per acre value will be assigned to the subject's acreage. This value includes bare land only as landscaping and utility improvements would be in addition. The appraiser has no basis for this value selection other than lots within Colstrip city limits have access to water and sewer, therefore, should be valued higher than rural home site acreages which sell at \$1,000 to \$1,500 per acre. However, due to the subject's size, a \$1.50 value per square*

foot or \$65,340 value per acre (\$1.50 x 43,560 square feet per acre = \$65,340) based on city property sales did not appear reasonable."

Mr. Zuelke stated that this calculates to about 4.6 cents per square foot, which is not logical to the DOR because "we're obligated to have to take note of the smaller sales that occur within the city limits of Colstrip." However, no evidence was presented to the Board to indicate that the DOR did analyze smaller tract sales.

Mr. Zuelke testified that it was his understanding that a previous DOR appraiser had determined the land value of 97 cents a square foot for the subject property during the 1993 reappraisal, and in 1997 he did not have enough sales to establish a value for the properties so left them at the same value as they were in 1993. **MCA, §15-7-111.** *Periodic revaluation of certain taxable property. (1) The department of revenue shall administer and supervise a program for the revaluation of all taxable property within classes three, four and ten. All other property must be revalued annually. The revaluation of class three, four, and ten property is complete on December 31, 1996. (Emphasis added.)* **ARM 42.18.109 (6)** *Residential lots and tracts are valued through the use of computer assisted land pricing (CALP) models. Homogeneous areas within each county are geographically*

defined as neighborhoods. The CALP models will reflect January 1, 1996, land market values. (Emphasis added.) The Department of Revenue apparently did not carry out the statutory mandate to reappraise the subject property during the 1996 reappraisal cycle, instead using the values of the previous cycle. They presented no evidence to the Board to support these values.

Mr. Zuelke testified that the cost approach is primarily used in this part of the state to value improved commercial properties and that the Montana Appraisal Manual contains information on valuation of mobile home parks. This information is also available through the Marshall Swift Valuation Service. However, the Department of Revenue apparently did not use the available information on trailer park valuation, nor did they attempt to separate and value the site improvements of the trailer hook-ups and use the land extraction method to try and establish a more accurate value for the subject property. *The Dictionary of Real Estate Appraisal, Third Edition*, published by the Appraisal Institute, provides the following definition of **"estimate of value"**: ***In appraising, an opinion based on an analysis of adequate data by one qualified to develop such an opinion.*** (Emphasis added.) The DOR did not present credible evidence to this Board to substantiate its value of 97 cents per

square foot. The lack of adequate data presented by the DOR in this appeal causes the Board to question the adequacy of any analysis that might have been done and the resulting estimate of value for the subject property.

The DOR has relied on the cost approach to value for the subject property. Albright v. Montana Department of Revenue, 281 Mont. 169, 1997, states 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." (Emphasis added.)

The Administrative Rules of Montana state:

42.20.107 Valuation Methods for Commercial Properties

(1) When determining the market value of commercial properties, other than industrial properties, department appraisers will consider, if necessary information is available, an income approach valuation. (Emphasis added.)

(2) If the department is not able to develop an income model with a valid capitalization rate based on 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, or, if appropriate, the market approach to value. The final valuation is that which most accurately estimates market value. (Emphasis added.)

The DOR lacked adequate income and expense information to prepare an income approach to value for the subject property so deferred to the cost approach. Mr. Burnett has

actual and projected income and expense figures for the mobile home park, but he did not present this information to the Board to justify his requested value, instead requesting that the value be set at his purchase price for the property.

According to §15-8-111 (1), MCA, the DOR is required to assess all taxable property at 100% of its market value. §15-8-111(2)(a) defines "market value" as "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." There is nothing in the record to suggest that Mr. Burnett was not a willing buyer and Western Energy was not a willing seller. The sale was well advertised and at least two other bids were received, according to Mr. Burnett's testimony. Although the DOR contended that Western Energy was not a willing seller, they presented no evidence to substantiate this. Western Energy offered no testimony or evidence as to their motivation for selling the property.

The Board referred to two relevant sections of the Administrative Rules of Montana: **42.20.454** and **42.20.455**, which follow, in pertinent part:

42.20.454 CONSIDERATION OF SALES PRICE AS AN INDICATION OF MARKET VALUE (1) When considering any objection to the appraisal of property, the

department may consider the **actual selling price of the property** as evidence of the market value of the property... (emphasis added)

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 added)

An independent fee appraisal was ordered by the First State Bank of Forsyth and is a part of the record in this appeal. The total value indication from that appraisal exceeded the total purchase price for the entire "package," which includes the subject property. There is no evidence in the record to indicate that the DOR considered either the actual selling price for the property or the independent fee appraiser's determination of value when setting their value. The Board considers the appraisal to provide more support to the final determination of value than the actual sale price. In addition, the appraisal offers support for the sale price. The Board, therefore adopts the value for the subject property of \$207,300 as stated in the McFarland appraisal. The value is to be broken down into \$47,920 for the land (23.96 acres @ \$2,000 per acre) and \$159,380 for the improvements.

CONCLUSIONS OF LAW

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

2. **§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.

3. **§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. (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.

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. Steer Inc. v. Department of Revenue, 245 Mont. 470, 1990.

6. Albright v. Montana Department of Revenue, 281 Mont. 196, 1997.

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 Rosebud County by the Assessor of that county at the value of \$207,300 (land - \$47,920; improvements - \$159,380). The appeal of the Department of Revenue is therefore denied, and the decision of the Rosebud County Tax Appeal Board is modified.

Dated this 25th day of August, 2000.

BY ORDER OF THE
STATE TAX APPEAL BOARD

(S E A L)

GREGORY A. THORNQUIST, Chairman

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 25th day of August, 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:

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Helena, Montana 59620

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DONNA EUBANK
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