

BEFORE THE STATE TAX APPEAL BOARD  
OF THE STATE OF MONTANA

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THE DEPARTMENT OF REVENUE	)	DOCKET NO.: PT-1999-46
OF THE STATE OF MONTANA,	)	
	)	
Appellant,	)	
	)	
-vs-	)	FACTUAL BACKGROUND,
	)	CONCLUSIONS OF LAW,
RICHARD BURNETT,	)	ORDER and OPPORTUNITY
	)	<u>FOR JUDICIAL REVIEW</u>
Respondent.	)	

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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:

Larkspur Apartments (nine four-plex units);  
Blocks 32, 33, 51, 52, 53 of the Original  
Townsite, City of Colstrip, County of  
Rosebud, State of Montana; geo codes #1151-  
34-3-22-01-0000, #1151-34-3-20-01-0000,  
#1151-34-3-18-01-0000, #1151-34-3-19-01-  
0000, #1151-34-3-21-01-0000. (Assessor  
codes #1324, #1325, #1328, #1329, #1330).

3. For the 1999 tax year, the DOR appraised the subject property at a value of \$867,348 for the land and improvements.

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, in pertinent part, follows:

*This letter is in regard to the AB-26 property review conducted by Richard E. Sparks and Leah Buffington on 10/15/99.*

Value for all of the 9 4-plexes...is set based on a replacement cost new less depreciation value as required by MCA and Department of Revenue administrative rule. In reviewing the property, we looked at similar properties in Colstrip, Forsyth, Baker, Ekalaka, and Miles City. Value ranges for the 4-plex properties is from \$13.99 to \$22.77 per square foot. These properties on Larkspur Drive in Colstrip fall in the high end of this value range (\$22.77 per square foot) due to their better condition in addition to the garages available on them that were not present on any of the comparable properties...

Therefore, no value adjustment is made on the following properties: Geocodes 29-1151-34-3-19-01-0000, 29-1151-34-3-20-01-0000, 29-1151-34-3-21-01-0000, 29-1151-34-3-22-01-0000, 29-1151-34-3-18-01-0000...

5. The taxpayer appealed to the Rosebud County Tax Appeal Board on November 15, 1999, requesting a reduction in value to \$259,200 for the land and improvements, stating:

*Value way too high for Colstrip. Value too high compared to sale price.*

6. In its March 10, 2000 decision, the county board adjusted the taxpayer's requested value and approved a value of \$291,438 for the land and improvements, stating:

*The Rosebud County Tax Appeal Board finds for the Appellant for an adjusted amount of \$291,438, being the purchase price paid by the Taxpayer, for the following reasons:*

1. *There was a willing buyer and a willing seller, noting that there were two (2) additional legitimate bids for less money.*
2. *It was an arms-length transaction.*
3. *There were (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-1999-45, DOR v. Richard Burnett, and PT-1999-47, DOR v. Richard Burnett.

#### **DOR'S CONTENTIONS**

Mr. Sparks stated that "a lot of the testimony from the previous appeal (PT-1999-45) is going to be the same." Mr. Zuelke had opened his testimony in the previous appeal by stating 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 had 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 Exhibit A consists of nine photographs of the subject property, which "give a good indication of the care and upkeep that has been done to the subject property," according to Mr. Sparks. He testified that, although he does not have a picture of every four-plex in the complex, those pictures are representative of the existing four-plexes. Each four-plex has a four-car detached garage, which is "a part of the property, and, ultimately, a part of the value." Mr. Sparks testified that during the AB-26 review of the property, "we did not go through every apartment in the four-plex complex. But of the ones that we went through, there was an indication of good maintenance having been performed on the property. Historically, when a tenant would move out of one of the apartment buildings, Western Energy would replace the carpet and paint all of the interior. I did not see any indication of extraordinary depreciation that would be as a result of settling, cracking in the walls."

DOR Exhibit B is 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. Sparks requested that DOR Exhibit A from PT-1999-45 be entered as an exhibit in this appeal and that the Board take administrative notice of the exhibit, because it addresses the economic condition of Colstrip. This is a

three-page exhibit entitled "STAB Appeals--Rosebud County July 18, 2000," which includes information relative to docket numbers PT-1999-45 and PT-1999-47, in addition to the present appeal. This exhibit is summarized in pertinent part as follows:

Appeal #02 A-- Blocks 32,33,51,52,53 Colstrip Original Townsite. This appeal encompasses nine 4-plex apartment buildings on 140,049 square foot of land (3.22 acres) valued at \$.97/square foot (total land value \$135,848). Each 4-plex unit contains a 4 car detached garage. Apartment buildings all built in 1973. Maintenance over last 20 years has been excellent. New roofs and vinyl siding in last 2-3 years. New carpet and paint in each apartment every time a tenant moved out. Each 4-plex in (sic) valued at \$72,760. Each garage is valued at \$8,500. Total improvement value per unit \$81,260. Total improvement value for entire appeal \$731,600 rounded.

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 belief 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**

	<b>Av. Annual \$:</b>	<b>Unemployment Rate:</b>
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%



Mr. Sparks pointed out that the information that had been gathered from Colstrip Mayor John Williams indicated that there are 372 Western Energy employees currently in Colstrip, 25 Rosebud Power Plant employees, 45 Peabody Coal employees, and 356 Pennsylvania Power and Light employees. Mr. Sparks explained that he brought this up "in order to point out to the Tax Appeal Board that in setting the value on this property, the Department of Revenue used the cost approach to valuation, as we did in six counties in southeastern Montana. Of those six counties, none of them had the availability of nearly 800 union-scale jobs, as does Rosebud County and particularly Colstrip." He stated that this indicates that although the extract business, coal mining, is "boom and bust," the jobs indicated in the survey are jobs that exist now and have existed for some time, providing some stability to the community that other southeastern Montana communities do not have. He emphasized that the report indicates that the average annual salary in Rosebud County is \$27,500, which is "by far and above the largest per capita annual salary in the counties in southeastern Montana that are near or adjacent to Rosebud County."

Mr. Sparks testified that although there are a "higher than average" number of rental properties in Colstrip, he

was unable to obtain adequate rental information to use the income approach to valuing the subject property. He believes that the previous DOR appraiser, Bill Zard, had contacted Western Energy, the prior owner of the property, in the past to obtain income and expense information, but he does not know whether the information was actually obtained. He testified that Montana Power or Western Energy still owns rental units in Colstrip that might compete with Mr. Burnett for tenants, and the rents that they charge would affect the rents that Mr. Burnett would be able to obtain for his properties. Mr. Sparks was not aware of Montana Power or any other property owners renting their units at rates below market rent.

Mr. Sparks requested that DOR Exhibit B from PT-1999-45 be entered as an exhibit in this appeal and that the Board take administrative notice of the exhibit. This exhibit 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."

Mr. Sparks requested that DOR Exhibit C from PT-1999-45 be entered as an exhibit in this appeal and that the Board take administrative notice of the exhibit. This exhibit 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 had testified in PT-1999-45 that one of the problems in valuing the properties under appeal 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."

Mr. Sparks and Mr. Zuelke had testified in PT-1999-45 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 "I paid \$259,000 for the nine four-plexes, and I feel that that was an arm's length transaction. There was a willing buyer and a willing seller, and if there's any question about that, I haven't heard any testimony that would hold up that Western was not a willing seller, that they were in need of selling." Mr. Burnett requested that the value be set at "\$259,000, what I paid for it."

Mr. Burnett testified that he does compete directly with Montana Power and Western Energy for tenants in their respective rental units. His rents are comparable to theirs but "they're all basically quite low compared with someplace like Billings." Mr. Burnett does not anticipate anyone making any changes in rents currently being charged because there are "a lot of vacant rentals around."

The Board agreed to take administrative notice of testimony and exhibits entered by Mr. Burnett in the previous appeal, PT-1999-45.

Taxpayer's Exhibit 1 from the previous appeal is a copy of the broker's sales brochure for the subject property as well as the properties under appeal in docket numbers PT-1999-45 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:

**Larkspur Apartments (9-4 plex units)**

Project Description

The Cactus and Larkspur apartments offer attractive design and landscaping, and excellent condition due to a corporate maintenance program. The Larkspur Apartments feature two and three bedroom units, vinyl siding, garages and a location around/near a park/playground area. The Cactus Apartment is mainly one bedroom units. Both properties were built around 1975. There are about 166 apartments in the town of Colstrip, with the other 100 units runned (sic) by Montana Power Company.

Apartment Income and Expenses

Reflecting vacancies of 13.4 to 17.5%, current rental income is estimated at \$168,222 per year as of June 1999. At 100% occupancy, rental income would be around \$194,160. The enclosed APOD provides a Broker projection of net operating income for the apartments of \$32,690 per year.

Current Scheduled Rental Income:

<u>Units</u>	<u>Monthly Rent</u>	<u>Scheduled Rental Income</u>	
		<u>Possible</u>	<u>Current</u>
18	@ \$285/mo.	\$61,560	\$50,787
18	@ \$335/mo.	\$72,360	\$59,697

Revenue trends are as follows:

<u>1995</u>	<u>1996</u>	<u>1997</u>	<u>1998</u>	<u>1999 YTD</u>
\$110,619	\$94,445	\$106,199	\$105,768	\$42,613

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 from the previous appeal 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-1999-45 and PT-1999-47. Mr. McFarland's opinion of value for the Larkspur Apartments is **\$309,100**. 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."

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, PT-1999-45) and the McFarland appraisal (excerpted in Exhibits 2 and B, PT-1999-45), present a total estimate of value for the entire package of the three properties, as well as individual estimates of value.

The sales brochure presented by A.L. Koelzer of Business Properties (Exhibit 1, PT-1999-45), indicates a sale price for the "apartment and mobile home project" of **\$700,000**, broken down into **\$7500 per apartment** (the subject property in the present appeal as well as in PT-1999-47) and \$2000 per mobile lot (PT-1999-45). The cover letter of the McFarland appraisal (Exhibit 2, PT-1999-45), 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** (the subject property in the present appeal) - **\$309,100**; Cactus Apartments (PT-1999-47) - \$183,600; and Mobile Home Court (PT-1999-45) - \$207,300.

Mr. Burnett testified that he had requested a value of \$259,200 for the subject property, the amount he had paid for the nine four-plexes. However, the Rosebud County Tax Appeal Board approved a value of **\$291,438**, stating that this amount is "the purchase price paid by the taxpayer." In the transcript of the hearing before the county board, which is

a part of the record for this appeal, Mr. Burnett had stated that he had actually paid \$291,438 for the property (Rosebud CTAB hearing transcript, 3/10/00, page 4), rather than \$259,200, the value he had requested on his appeal form. **\$291,438**, the value determined by the county board, based on the taxpayer's verbal request at the county hearing, rather than the taxpayer's requested value on the appeal form, is the value before this Board.

As the appellant, the DOR carries the burden of proof in this appeal. Steer Inc. v. Department of Revenue, 245 Mont. 470, 1990. Although in Exhibit A, PT-1999-45, the DOR had broken down their requested value for the subject property of \$867,348 into \$135,848 for the land (140,049 square feet @ \$.97/square foot) and \$731,600 (rounded) for the improvements, they had presented only the total value on the appeal form and did not emphasize any breakdown of the total value into land and improvements during the hearing. The DOR did not present the subject property record cards as exhibits. However, the property record cards are included in the record for this appeal, as they were entered as exhibits for the initial appeal before the county board. Comparable sales had also been entered as exhibits in the county hearing, so are a part of the record, but they were not presented to the Board in this hearing.

The DOR limited their attempted justification of the improvement value to displaying pictures of the subject properties and testifying that the four-plexes are well maintained and do not show evidence of extraordinary depreciation. 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. Mr. Zuelke requested that the Board take administrative notice of Exhibit C from PT-1999-45, computer print-outs of sales in Rosebud County, but not in the subject neighborhood, between 1988 and 1995. He thought that the sales on page three of the exhibit, in the Sweetgrass Acreage Tract and Cimarron Subdivision, both in Colstrip, had been used by the previous DOR appraiser to determine the land value of 97 cents a square foot.

Mr. Zuelke had testified in PT-1999-45 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, PT-1999-45) 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 ( $\$1.50 \times 43,560$  square feet per acre = \$65,340) based on city property sales did not appear reasonable."*

Mr. Zuelke had 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 had 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.

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.)

Mr. Sparks testified that there are a “higher than average” number of rental properties in Colstrip, and the DOR had attempted to obtain rental information but was unable to do so. He had not contacted Mr. Burnett for income and expense information. Although he did not contact Western Energy, the previous owner, for such information, he believed that Bill Zard, the previous DOR appraiser, had done so.

*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 for the subject property. 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.

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 \$309,100 as stated in the McFarland appraisal. The value is to be broken down into \$6,440 for the land (3.22 acres @ \$2,000 per acre) and \$300,660 for the improvements.

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## 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.

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.

7. The appeal of the Department of Revenue is hereby denied, and the decision of the Rosebud 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 subject property shall be entered on the tax rolls of Rosebud County by the Assessor of that county at the value of \$6,440 for the land and \$300,660 for the improvements. 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

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JAN BROWN, Member

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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:

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

Richard Burnett  
Box 2228  
Colstrip, MT 59323

Appraisal Office  
Rosebud County  
Rosebud County Courthouse  
Forsyth, Montana 59327

Robert Kalt  
Rosebud County Tax Appeal Board  
P. O. Box 145  
Forsyth, Montana 59327

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DONNA EUBANK  
Paralegal