

BEFORE THE STATE TAX APPEAL BOARD  
OF THE STATE OF MONTANA

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THE DEPARTMENT OF REVENUE	)	DOCKET NO.: PT-1999-47
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:

Cactus Apartments (three eight-plex units);  
Blocks 48 and 49 of the Original Townsite,  
City of Colstrip, County of Rosebud, State  
of Montana; geo codes #1151-34-3-08-01-0000  
and #1151-34-3-10-01-0000. (Assessor codes  
#1326 and #1327).

3. For the 1999 tax year, the DOR appraised the subject property at a value of \$430,885 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...3 8-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...The value range on the 8-plex properties is from \$19.07 to \$35.98 per square foot, with the majority lying around \$22.00 per square foot. The subject properties on 4 and 5 Cactus Drive are valued at \$22.11 per square foot, which is consistent with Department of Revenue valuation procedures.

Therefore, no value adjustment is made on the following properties: Geocodes 29-1151-34-3-08-01-0000 and 29-1151-34-3-10-01-0000...

5. The taxpayer appealed to the Rosebud County Tax Appeal Board on November 15, 1999, requesting a reduction in value to \$172,600 for the land and improvements, stating:

*Value too high for Colstrip.*

6. In its March 10, 2000 decision, the county board approved the taxpayer's requested value of \$172,600 for the land and improvements, stating:

*The Rosebud County Tax Appeal Board finds for the Appellant for the appraised value as determined by the Taxpayer in the amount of \$172,600 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 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 used neighborhood trends as being neutral when this board felt it was decreasing.*

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-1999-46, DOR v. Richard Burnett.

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

Mr. Sparks had stated in the previous appeal (PT-1999-46) that "a lot of the testimony from the previous appeal (PT-1999-45) is going to be the same." The Board again agreed to take administrative notice of testimony and exhibits entered in the two previous appeals (PT-1999-45 and PT-1999-46). Mr. Zuelke had opened his testimony in the first 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."

Mr. Sparks presented DOR Exhibit A, six photographs of the subject property, and he testified that the property includes three eight-plex apartments units, each with a detached outbuilding that is used for storage and had in the past been used as a laundry facility. He stated that the property was valued through the cost approach.

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 "indicates economic conditions in Colstrip and the feelings of 51 percent of the people that responded to that survey. 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-1999-46, in addition to the present appeal. This exhibit is summarized in pertinent part as follows:

Appeal #03A—Blocks 48 and 49 Colstrip Original Townsite. This appeal encompasses 3 8-plex apartment buildings on 73,181 square feet of land (1.68 acres) valued at \$.97/square foot (total land value \$70,985). Each unit has a detached outbuilding used for storage. All 3 buildings built in 1976. Maintenance over the last 20 years has been excellent, however not as good as the 4-plex buildings. Each building valued at \$115,030. 2 outbuildings valued at \$4,360 and one at \$6,080. Total improvement value per unit \$119,390 for 2 and \$121,110 for one. Total improvement value for entire appeal \$359,900 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%

During the previous hearing (Docket No. PT-1999-46), Mr. Sparks had 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 had explained that he had 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 had 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 had 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."

At the request of the DOR, the Board will take administrative notice of DOR Exhibit B from the previous 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. Sparks had also testified in the previous appeal 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 had 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-1999-45 and PT-1999-46. 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.

Mr. Sparks concluded his testimony by again stating that the DOR believed this was not a legitimate sale because the quantity of parcels in the sale excluded most of the people who might have been interested in buying rental property in Colstrip. He testified, "I think they could have gotten a lot more money had they split that up. The fact

that they didn't indicated that they weren't interested in maximizing the money that they got for that property, and they didn't need to. They're selling their power plants. Property for their employees to live in has very little attraction for them in a town where they don't own operating property."

Mr. Zuelke stated that the other thing he would like to add is that "in setting value on this property, separately or in its entirety, it's a difficult task for the Department of Revenue or fee appraisers or anybody else that looks at it, because of the lack of market information, be that actual sale prices or market information, in order to try to use the income approach to value. Department of Revenue tried to gather both market and income data. We could not come up with enough to substantiate a model in order to value these properties and thus had to default to cost approach to value. The appraisals that had been done, or the real estate analysis that had been done, developed the income approach to value specific to that property; and the appraisers that did that qualified that by stating there was a shortage of income information in developing those appraisal reports. Department of Revenue viewed the cost approach as the best thing that was available for us in 1997, and these were the values."

**TAXPAYER'S CONTENTIONS**

The Board agreed to take administrative notice of testimony and exhibits entered by Mr. Burnett in the previous appeals, PT-1999-45 and PT-1999-46.

Taxpayer's Exhibit 1 from PT-1999-45 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-1999-46. 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 of this appeal is as follows:

**Cactus Apartments (3 - 8 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.

Revenue trends are as follows:

<u>1995</u>	<u>1996</u>	<u>1997</u>	<u>1998</u>	<u>1999 YTD</u>
\$63,261	\$53,990	\$53,902	\$55,139	\$23,411

Mr. Burnett had 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 had 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 had emphasized that he was a willing buyer and Western Energy, which is owned by Montana Power, was a willing seller in this transaction. He had 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 had

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 PT-1999-45 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-1999-46. Mr. McFarland's opinion of value for the Cactus Apartments is **\$183,600**. Mr. Burnett had 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 had 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. He had also 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."

Mr. Burnett elaborated on some of his testimony in the two previous appeals by stating again that the bank had ordered the appraisal, which was prepared by Mr. McFarland, and he believes it is very accurate because it came in "real close to the market value done by Al Koelzer with Business Properties. Al was very instrumental in setting that price, the sales price, working with Western. Al is on a commission, and if he thought that property would have sold for \$1.2 million, he would have advised them to sell it for that. He had the ability to put a package together, and if one buyer wanted the trailer court and I wanted the four-plexes and he was offering more for that, that could have been worked out. I was the only one that came in and wanted to buy all three for the highest price. I bid on it and I got it. That was an arm's length transaction, a willing buyer, willing seller. There is no evidence presented today or at the last hearing that it was not an arm's length transaction. The Department of Revenue has brought in absolutely no sales data to support their values they're

trying to get for this property. They have no comparables. There's no doubt that there's an awful lot of vacancies down there. There's a lot of lots that never will be sold. There's a complete RV park that they just let go to waste. It's now grassing over. They're going to remove the asphalt out of it. That's what's happening to property in Colstrip. There is no more need for it. We're not under construction. It's on a downslide. And that's all I've got."

#### 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 (Taxpayer's 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-1999-46) and \$2000 per mobile lot (PT-1999-45). The cover letter of the McFarland appraisal (Taxpayer's 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 (PT-1999-46) - \$309,100; **Cactus Apartments** (the subject property in the present appeal) - **\$183,600**; and Mobile Home Court (PT-1999-45) - \$207,300.

Mr. Burnett's requested value of \$172,600, which was approved by the Rosebud County Tax Appeal Board, was the amount that he had paid for the three eight-plexes, according to his testimony.

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 \$430,885 into \$70,985 for the land (73,181 square feet @ \$.97/square foot) and \$359,900 (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 and describing the subject properties, three eight-plex apartment units, each with a detached outbuilding that is used for storage. No evidence or testimony was presented to indicate the condition of the 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. In the previous hearing (PT-1999-46), Mr. Zuelke had 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 Subdivison, 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 had testified in the previous appeal (PT-1999-46) 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. He emphasized again in the present appeal that the DOR "tried to gather both market and income data" but could not "come up with enough to substantiate a model in order to value these properties, and thus had to default to cost approach to value." The DOR, therefore, "viewed the cost approach as the best thing that was available for us in 1997, and these were the values."

*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 \$183,600 as stated in the McFarland appraisal. The value is to be broken down into \$3,360 for the land (1.680 acres @ \$2,000 per acre) and \$180,240 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.

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 \$3,360 for the land and \$180,240 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 )

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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