

BEFORE THE STATE TAX APPEAL BOARD
OF THE STATE OF MONTANA

ELTON CAMPBELL RANCHES, INC.)	DOCKET NO.:	PT-1997-47,
)		PT-1997-48,
Appellant & Respondent,)		PT-1998-3R
)		
-vs-)		
)		
THE DEPARTMENT OF REVENUE OF)	FINDINGS OF FACT,	
THE STATE OF MONTANA,)	CONCLUSIONS OF LAW,	
)	ORDER and OPPORTUNITY	
Appellant & Respondent.)	<u>FOR JUDICIAL REVIEW</u>	

The above-entitled appeals were heard April 10 through April 14, 2000, in the City of Helena, in accordance with an order of the State Tax Appeal Board of the State of Montana (the Board). The notices of the hearings were given as required by law. Attorneys, C.W. Stocker and Donald Ostrem represented Elton Campbell Ranches, Inc. (hereafter "ECR"). Tax Counsels, Roberta Cross Guns and Brendan Beatty represented the Department of Revenue (hereafter "DOR"). The appeals involve the valuation of a sanitary landfill site. Expert witnesses testified for both parties although not all provided an opinion of value. The duty of the Board is to determine the market value of the property based on the preponderance of the evidence. The State of Montana defines "market value" as **MCA §15-8-111. Assessment - market value standard - exceptions.** (1) All taxable property must be assessed at 100% of

its market value except as otherwise provided. (2)(a) Market value is a value at which property would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or to sell and both having a reasonable knowledge of relevant facts.

ECR is the appellant in this proceeding and therefore has the burden of proof. It is true, as a general rule, that the appraisal of the Department of Revenue appraisal 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)).

This Board is satisfied in part with the taxpayer's argument and finds that the value established by the DOR should be modified.

FINDINGS OF FACT

1. Due, proper and sufficient notice was given of this matter, the hearing, and of the time and place of the hearing. All parties were afforded opportunity to present evidence, oral and documentary and a schedule for post-hearing briefs was established.
2. The 1998 assessment notice (geo-code #3257-35-1-01-01-000) issued to ECR lists the property as follows:

516.7 acres of non-irrigated agricultural land.
30 acres of agricultural grazing land.
93.3 acres of commercial tract land.
Improvements located on commercial tract land.

3. The 93.3 acres of commercial tract land and improvements located thereon are the subject of the appeal.
4. The property description as described by the lease between Gary and Sandra Campbell and Waste Management of Montana, Inc. (hereafter WMM), signed December 11th, 1990 is described as follows:

Approximately 150 acres of land and is situated portions of Section 25, 26, 35 and 36 of Township 22 North, Range 4 East, in the county of Cascade, State of Montana.

5. Testimony and exhibits illustrate that the total landfill area consists of 93.3 acres.
6. Testimony and exhibits illustrate that the improvements, site improvements and compliance items consist of:

- ?? 2,400 square foot metal building
- ?? 12' x 32' utility building
- ?? 8' x 16' shed
- ?? 50 ton platform scale
- ?? 3 fuel tanks
- ?? drive house (mobile home)
- ?? fencing
- ?? roads
- ?? asphalt paving
- ?? 3 foot thick clay liner
- ?? leachate collection system & monitoring equipment

7. The DOR's original 1997 assessment notice reflected the following values:

<u>Property Classification</u>	<u>Reappraisal Value</u>
516.7 acres - non-irrigated	\$ 99,531
30 acres of grazing land	\$ 836
93.3 acres of commercial tract land.	\$16,045,511
Total	\$16,145,878

8. The taxpayers appealed to the Cascade County Tax Appeal Board (hereafter CCTAB) on August 22, 1997, requesting a reduction in value to \$956,612, stating:

The Dept. of Revenue has appraised intangibles, which have been deemed non-assessable by the Dept. Additionally, the methodology used by the Dept. is faulty in the appraisal of the land. Lastly, the assessment included property rights not owned or controlled by the taxpayer of record.

9. At the CCTAB hearing, the DOR modified the appraised value to \$9,897,317. The November 12, 1997 revised assessment notice reflects the following values:

<u>Property Classification</u>	<u>Reappraisal Value</u>
516.7 acres - non-irrigated	\$ 99,531
30 acres of grazing land	\$ 836
93.3 acres of commercial tract land.	\$ 279,900
	\$9,517,050
Total	\$9,897,317

10. At the CCTAB hearing, the taxpayer modified the requested appraised value to \$911,644.
11. In its December 2, 1997 decision, the CCTAB reduced the DOR values, stating:

After hearing testimony and reviewing exhibits, the Board determined the land value set by the Dept. of Revenue of \$380,267.00 is fair and equitable. However, the 24' X 32' steel bldg. is now valued at \$50,714.00; the 12' X 32" utility bldg. is now at \$8,113.00; the 50 ton platform

scale is at \$35,000.00; the six hydrogeologic study wells have a new value of \$60,000.00; the excavation of 142,000 cubic yards of dirt are now valued at \$1,704,000.00. It is further noted that the 8' X 16' shed remain at \$1,290.00; the three fuel tanks remain at \$3,280.00; the drive house remains at \$32,500.00; asphalt paving remains \$109,650.00 the clay leach pad liner remains at \$155,444.00. In conclusion, the building permits, legal fees, construction insurance, licenses, and operation permits are not attributable to the improvement values of the subject property. The new total value, including all above mentioned items, is now \$2,504,258.

12. The taxpayers then appealed that decision to this Board on December 22, 1997, stating:

The Appeals Board considered only the cost approach without addressing either depreciation or obsolescence. Additionally, testimony by the State indicates that other landfills in Montana were not appraised, thereby creating inequity of assessment. Appellant (sic) now believes the original appraised value by the Taxpayer to be in excess of equitable values.

13. The DOR filed a cross appeal (PT-1997-47) on December 30, 1999, stating:

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

14. At the hearing before this Board, the taxpayer and the DOR presented appraisals that again modify the aforementioned market values. These appraisals are discussed in the taxpayer's and DOR's contentions below.

AGREED FACTS

The following facts are admitted, agreed to be true, and

require no proof. (amended final pre-hearing order dated April 10, 2000.)

1. Appellant, Elton Campbell Ranches, Inc. (hereafter "ECR"), has filed appeals on the property assessments for 1997, and 1998;
2. ECR has exhausted its administrative remedies, allowing it to appeal to the Board for resolution of this matter;
3. ECR has retained an independent expert appraiser for the valuation of the real property which forms the basis of this suit and the Respondent, Montana Department of Revenue (hereafter "Department") has used its employees to appraise the real property;
4. ECR leases the real property to a company which is in the business of collecting sanitary waste operating landfills;
5. The company leasing the real property has placed improvements on this land for the purpose of operating a landfill and supporting its other related businesses such as the collection of sanitary waste;
6. The landfill operated on the real property is subject to regulation of the State of Montana's Department of Environmental Quality (hereafter "DEQ");
7. The landfill on the real property, which forms the basis of this appeal, is classified as a Class II landfill by DEQ; and ECR receives lease revenue from the real property and does not have any interest in the leasehold estate, owned and operated

by the sanitary waste company, which operates a sanitary landfill business on the real property.

STATEMENT OF ISSUE

The issue before the Board is the market value of the real property as of January 1, 1997 and January 1, 1998.

TAXPAYER'S CONTENTIONS

Exhibit #2 is a "Summary Appraisal Report" performed by Jerry R. Jones, MAI. Mr. Jones was presented as an expert witness. Mr. Jones's expertise in this matter applies the valuation of landfill property. The value conclusion as determined by Mr. Jones for the subject property for January 1, 1997 is \$1,277,000 (page 1, exhibit 2). Summarized, exhibit B illustrates the following:

Scope of the Appraisal

...The subject property is leased to Waste Management of Montana, Inc. The most prudent manner in which to estimate the underlying real property value is to measure the present value of the future rent or lease payments to the land owner. These lease payments are also referred to as "royalties"...

...My assignment was to estimate the market value of the fee simple interest of the underlying real property at the subject landfill...

...The appraiser was provided with operating data for the facility for years 1995, 1996, 1997 and through August of 1998. The remaining capacity and projected income were based on the past operating history of the property. The estimated future net income to the land has been discounted to a present value estimate which is considered to be the market value of the fee simple interest in the underlying real estate.

Legal Description

The subject site is approximately 93 acres of land situated in portion of Section 25, 26, 35 and 36 of Township 22 North Range 4 East in Cascade County, Montana.

Site Description and Analysis

...The total landfill area consists of approximately 93.3 acres of land. Approximately twenty-three acres is a closed area which was begun in 1980, prior to Subtitle D regulations. Minimal design and cell preparation went into this area. This 23 acres is known as the old fill area of Module 1.

A 2.5 acre cell was constructed in 1991, also prior to Subtitle D. This cell, which is Cell 1 of Module 1, is a

combination of an engineered clay liner and re-compacted sub-grade. It also included a leachate collection system. Phase 1 of Module 1 is a 5.5 acre cell which was constructed in 1994 in accordance with Subtitle D requirements. Compliance items include a three foot thick compacted clay liner and a leachate collection system.

Improvements on the site include a 2,400 square foot metal building, a 12 x 32 utility building, an 8 x 16 square foot shed, a 50 ton scale, three fuel tanks, asphalt paving and a drive house. The site is assumed to be in compliance with all applicable local, state and federal laws pertaining to the operation of a solid waste landfill.

Introduction

The appraisal of a landfill requires a clear understanding of the scope of the assignment, appropriate definitions, terminology, and valuation. Before an appraiser can proceed with the valuation of a landfill, it is imperative that the appraiser consider the division between real property, tangible property, and intangibles which complete the going concern or business enterprise. The appraiser must be able to distinguish between real property versus going concern in the valuation of a landfill.

The last issue discussed in this section of the report pertains to fractional interest. The fractional interest discussion reveals the importance of allocating that portion of the income stream attributable only to the real property, excluding all intangibles.

Appraisal and Valuation Definitions

Market Value –

The most probable price which a property should bring in a competitive and open market under all conditions requisite to a fair sale, the buyer and seller, each acting prudently, knowledgeable and assuming the price is not affected by undue stimulus...

Going-Concern Value –

Going-concern value is defined by the Appraisal Institute's Appraisal of Real Estate. 11th Edition, 1996, page 26, as follows:

The value of a proven property operation. It includes the incremental value associated with the business concern, which is distinct from the value of the real estate only. Going-concern value includes an intangible enhancement of the value of an operating business enterprise which is produced by the assemblage of land, building, labor, equipment and marketing operation. This process creates an economically viable business that is expected to continue. Going-concern value refers to the total value of a property, including both real property and intangible personal property attributed to business value.

Going-concern appraisals are commonly conducted for hotels and motels, restaurants, bowling alleys, industrial enterprises, retail stores, shopping centers, and similar properties. For these types of property, the physical real estate assets are integral parts of an ongoing business. It may be difficult to separate the market value of the land and the building from the total value of the business, but such a division of realty and non-realty components of value is not impossible and is, in fact, often required by the federal regulations. Only qualified practitioners should undertake this kind of assignment, which must comply with appropriate USPAP standards.

Fee Simple Estate -

The real estate interest appraised is the fee simple estate as of the effective dates of the appraisal. The Dictionary of Real Estate Appraisal. 2nd Edition, 1989, defines fee simple estate as follows:

Absolute ownership unencumbered by any other interest or estate; subject only to limitations of eminent domain, escheat, police power and taxation.

Leased Fee Estate –

The real estate interest appraised is the leased fee estate as of the effective date of the appraisal. The Dictionary of Real Estate Appraisal, 2nd Edition, 1989, defines leased fee estate as follows:

A leased fee estate is an ownership interest held by a landlord with the right of use and occupancy conveyed by lease to others; the rights of lessor (the leased fee owner) and leased fee are specific by contract terms contained within the lease.

When a property is leased at a market rental rate, Fee Simple and Leased Fee Estates are synonymous.

Leasehold Estate –

The right to use and occupy real estate for a stated term and under certain conditions: conveyed by lease.

A positive leasehold estate is created when a lessee occupies real estate at a contract rate below the prevailing market rental rate. A negative leasehold estate is created when a lessee occupies real estate at a contract rental rate above the prevailing market rental rate. When a lessee occupies real estate at a contract rental the same as the prevailing market rental rate no leasehold estate exists in which case leased fee, leasehold and fee simple market value are synonymous.

Tangible and Intangible Assets –

USPAP, Standard Rule 1-2(e), is quite explicit in the binding requirement on appraisers to make this distinction between real property and other elements of the business.

In developing a real property appraisal, an appraiser must observe the following specific appraisal guidelines: (e) identify and consider the effect on value of any personal property, trade fixtures, or intangible items that are not real property but are included in the appraisal.

Real Estate – an identified parcel or tract of land including improvements, if any Real Property – the interest, benefits and rights inherent in the ownership of real estate.

Personal Property – identifiable, portable, and tangible items which are considered by the general public as “personal”, e.g. furnishings, art work, antiques, collectable; all property that is not classified as real estate.

Business Assets – tangible and intangible resources other than personal property and real estate that are employed by a business enterprise in its operation. Business Enterprise – the interests, benefits, and rights inherent in the ownership of a business enterprise or a part thereof including taxable real property, taxable tangible personal property and nontaxable intangible property and values.

DISCUSSION OF PERTINENT VALUATION ISSUES**Real Property versus Going-Concern Issues:**

... Some of the significant nontaxable intangible values which must be excluded from a going concern or business enterprise value include values associated with (i) franchise agreements and other contracts, (ii) management expertise, (iii) business reputation, (iv) competitive advantages associated with territorial exclusivity, and (v) the integration of collection business activities and transfer station business activities with landfill business activities.

... Trying to allocate the going-concern from the real property is very difficult. The total elements of the going-concern can only function with contracts, franchises, operator permits and operation agreements in place, which are intangibles. The most important element of the landfill as a business enterprise is the

permit...

...Real estate appraisal theory indicates that the income to land is land rent (or royalty). Real estate appraisal theory also indicated that the net income from all elements of the going-concern, tangibles and intangibles, can be capitalized into a value indication of the going concern

...Real property is valued by capitalizing the net earnings a property owner would receive from renting the property. Going-concern value includes all the intangibles of the business enterprise and involves a capitalization at an appropriate rate of the net operating income (NOI).

VALUATION METHODOLOGY

Valuation is based on the general and specific background experience, opinions of qualified, informed persons, consideration of all data gathered during the investigative phase of the appraisal, and analysis of all market data available to the appraiser. Three basic approaches to value are available to the appraiser: the Cost, Sales Comparison and the Income Approaches. Although each approach must be considered, each approach is not necessarily given equal consideration because the scarcity of reliable data may preclude the use of one or more approaches. In the final analysis, the approach(es) which reliably simulate the actions of market participants is (are) given primary consideration.

Cost Approach

...Due to the difficulty in estimating depreciation, external obsolescence and segregating and valuing each landfill component as required under USPAP, combined with the fact that a typical investor does not consider cost as a reliable measure of value, the cost approach has been deleted from this report.

Sales Comparison

...As can be seen from the above list of factors that would have to be considered and adjusted for as necessary, estimating the value of a landfill by this method would result in an unacceptable number of adjustments to the sales and an unacceptable percentage adjustment to the sales. This, combined with the fact that there is a great deal of business enterprise value and intangible asset value in a landfill operation which are part of the sale price and are very difficult to isolate and value individually. Due to the foregoing reasons the Sales Comparison Approach has not been utilized in estimating the value of the subject property's real estate assets.

Income Approach

This approach is based upon the theory that the value of property tends to be set by the market land rent attributable to the real property. The royalty to real property is a common technique or procedure used to value real estate. Royalty is defined in real estate in The Dictionary of Real Estate Appraisal as "the money paid to an owner of realty for the right to deplete the property of a natural resource, e.g. oil, gas, mineral, stone, builders and gravel, timber; usually expressed as a stated price or price per unit of the amount extracted; a combination of rent and a depreciation or depletion charge." The royalty to real property method benefits from being a simple procedure that is used in the real property value of wasting asset properties like a landfill and quarries.

Because the subject is part of an integral waste collection and disposal company, careful consideration must be given to the type of value estimate. As discussed earlier in this report, it is critical to consider the division between real property, tangible personal property and intangibles which create "going concern" or "business enterprise." The assessor or the appraiser is to only value real property and not the intangibles involved in the "going-concern" or "business enterprise." An alternative to analyzing and

deducting operating and business expenses is to use a royalty analysis when estimating the income attributable to the real property component...

RECONCILIATION AND FINAL VALUE ESTIMATE

As explained in the foregoing appraisal report the most prudent manner in which to estimate the market value of the underlying real property in a solid waste sanitary landfill operation is to estimate the income to the site under a lease from a landowner to a operator. The estimated remaining economic life of the landfill as of January 1, 1997 was approximately 30 years.

All data provided to the appraiser was analyzed and discussed thoroughly with Waste Management personnel. It is the appraiser's opinion that the income estimates, royalty rate and discount rate are appropriate for the valuation of the subject.

Based on the foregoing report, it is my opinion that the market value of subject real property, subject to the existing lease to Waste Management of Montana, Inc., as of January 1, 1999 is as follows:

\$1,277,000.00

ECR's expert appraiser, Jones, considered the cost approach, direct sales comparison approach, and the income approach and determined that the "Market Rent to Land" discounted cash flow approach would yield the most accurate appraisal of ECR's land and improvements. Jones determined that a discount rate of 20% was appropriate for use in the discounted cash flow calculation in ECR's "Market Rent to Land" appraisal of the real property and improvements. Jones projected the market rent income stream 30 years into the future in ECR's "Market Rent to Land" discounted cash flow appraisal in determining market value of ECR's land and improvements as of January 1, 1997. Jones used commonly accepted appraisal techniques that satisfy USPAP requirements in appraising the value of the real property and improvements that are the subject of this litigation, for a value indication of \$1,277,000.00 as of January 1, 1997.

Taxpayer exhibits #3 and #21 are review appraisals performed

by Douglas F. Main, MAI - National Director of Landfill Valuation of America/LVA Consulting and Rudy R. Robinson, MAI - Austin Valuation Consultants, Inc. Mr. Main and Mr. Robinson reviewed DOR's appraisals of the subject property. The following are the reviewers' statements or conclusions:

Main Mr. Fontana and Mr. Dempsey (the appraisers for both reports) lack the experience and knowledge to competently estimate the market value of the subject. The resulting appraisals were careless, inconsistent, misleading and deficient. Consequently, the resulting value estimates were not credible.(pg. 5, exhibit #3)

Robinson In summary, these reports are sufficiently deficient and based on the information provided appear to violate the majority of standards for professional appraisal practice as set forth by the Uniform Standards for Professional Appraisal Practice. Many of the mistakes which have been made by the authors of these appraisals appear to be associated with their lack of experience, training and education with this type of property valuation which is in my opinion a violation of the competency provision of these same standards. (pg. 14, exhibit #21)

Taxpayer exhibits 10, 11 and 12 are decisions with similar issues before this Board. The following table summarizes these decisions:

//
 //
 //
 //
 //

Exhibit #	#10	#11	#12
Jurisdiction	Iowa District Court	Assessment Appeals Board #1, County of San Diego	Court of Appeal of the State of California, Second Appellant District, Division Two

Plaintiff	Empire Construction Company.	Allied Waste Industries, Inc.	American Sheds, Inc.
Defendant	Dickson County Board of Review.	Assessor for the County of San Diego.	County of Los Angeles.
Issue	Valuation of a sanitary landfill.	Valuation of a sanitary landfill.	Valuation of a sanitary landfill.
Order	Adopts the plaintiff's values as determined by the market rent approach to value (income approach.	Adopts the plaintiff's values as determined by the market rent approach to value (income approach.	Upheld the board's (county assessment appeals board) consideration the market rent approach to value (income approach) and its determination of a discount rate.
Date of Order	February 24, 1999	January 12, 2000	Filed August 11, 1998

The taxpayer has made the argument that the DOR has appraised more than just the real estate components. The DOR has included in the appraisal non-taxable intangibles, such as licenses, goodwill, existing customers, enterprise value, etc. Therefore, it is appraising the going-concern value.

DOR'S CONTENTIONS

The DOR appraised the subject landfill at a value of \$4,000,000. Exhibit E is the appraisal for the subject property. Summarized, this exhibit illustrates the following:

SUMMARY OF SALIENT FACTS AND CONCLUSIONS (pg. 2)

Purpose of Appraisal	Market value
Property Rights Appraised	Unencumbered Fee Simple Interest
Value Indications:	
Cost Approach	\$4,007,642
Income Approach	
Discounted Cash Flow	\$3,787,973
Direct Capitalization	\$4,044,378
Market Approach	N/A
Final Opinion of Value:	\$4,000,000
Date of Value Estimate:	January 1, 1997

COST APPROACH (pgs. 14 & 15)

...The land lease between Gary and Sandra Campbell and Waste Management of Montana, Inc., includes 492.6 acres of which 93.3 is permitted for use as a sanitary landfill, by the Department of Environmental Quality. The entire 93.3 permitted acres lies in Section in Section 35 Township 22N Range 4E. In addition, the Campbell's own section 35 in it's entirety. The 93.3 permitted acres is valued as commercial tract land, similar to other commercial tract land in Cascade County. The remaining 546.7 acres is valued at it's productive agricultural capacity, as the remaining acres are part of the Campbell Ranch farm operation. Although the lease wholly encompasses 492.6 acres, of the 640 acres in section 35, only 93.3 acres is permitted for use as a landfill, therefore, the remaining 399.3 acres, of the lease, is valued as agricultural use.

Land Value

1. The 93.3 permitted acres is classified as commercial Tract Land at a rate of \$3000 per acre.	+	\$279,900
2. The remaining 546.7 acres is classified as agricultural	+	<u>\$100,367</u>
Total for land value	=	\$380,267

Improvement Value

1. 2,400 Sq. Ft. steel building, RCNLD	+	\$32,340
2. Utility building 12 x 32, RCNLD	+	\$7,780
3. A 8 x 16 shed, RCNLD	+	\$1,290
4. A 50 Ton Platform Scale, RCNLD	+	\$64,750
5. 3 fuel tanks with a capacity of 5,750 gallons, RCNLD	+	\$3,270
6. Asphalt paving, RCNLD	+	\$109,650
7. Drive House, with heat, a/c and plumbing, RCNLD	+	\$32,500
8. Excavation of the site for installation of the liners. 400,000 C.Y. X \$4.68 (7.80 – 40% discount)	+	\$1,872,000
9. Clay Leach Pad Liner. The cost is estimated @ \$2.07/Sq. Ft. \$2.07 X 261,360 (6 acre site)	+	\$541,015
10. Hydrogeologic study wells	+	\$133,019
11. Building Permits, Legal Fees, Construction Insurance Licenses, Operational Permits	+	<u>\$500,000</u>
Subtotal for Improvement Value	=	\$3,297,614
12. Estimated additional engineering and design costs attributable to the replacement costs of the real estate improvements (10% of replacement costs)	+	\$329,761
TOTAL VALUE INDICATED BY COST APPROACH:		\$4,007,642

INCOME APPROACH TO VALUE (pgs. 16-18)

The DCF analysis is based on the gross income of the landfill operation. The lease paid to the land

owner is treated as an expense to the landfill operation, rather than income to the land. The result of the Cumulative Present Worth of Cash Flows, as illustrated on the following page indicates a value of:

\$3,787,973

DIRECT CAPITALIZATION

Gross income from land and real estate improvements as provided in the taxpayer's appraisal report.

Annual Tonnage:	92,294
Gross Income:	\$1,884,082

Estimated expenses are to be subtracted from the Gross Income to arrive at a Net Operating Income (50% of Gross Income). In this situation the lease payment to the land owners is extraneous to the typical operating expenses (50%) and is added to the typical expense ratio. The lease rate is approximately 11.36 of the Gross Income. Therefore, the total expense ratio is 61.36%.

Estimated at 61.36% of Gross Income	<u>\$1,156,040</u>
-------------------------------------	--------------------

Net Operating Income	\$ 727,988
-----------------------------	-------------------

Value using a Capitalization Rate of 18%	<u>\$4,044,378</u>
---	---------------------------

MARKET APPROACH (page 19)

...There is insufficient data to support the market approach.

CONCLUSION (page 23)

...The Department has carefully considered all factors affecting the value of the subject property. The approaches to value generated reasonably close final value estimates. The values indicated are based on market relationships and serve as guides upon which to arrive at an opinion of value. More consideration was given to the cost approach.

After analyzing all the factors contained in this report, it is the opinion of the appraiser that the market value of the subject property, as of **January 1, 1997**, was:

FOUR MILLION DOLLRS (sic)

\$4,000,000

The DOR has relied on the cost approach to value. This valuation method was selected due to the improvements being relatively new. STAB found in, ***Express Ventures Inn, d.b.a. Holiday Inn Express v. Department of Revenue*** (1998), PT-1997-83,

that the cost approach is the best method for valuing commercial property that has new or nearly-new improvements. *Express Ventures Inn*, at pp. 21-22, quoting Appraisal of Real Estate (2nd Ed.) The Board further noted that "[t]his (the cost) approach is particularly useful in valuing ... properties that are not frequently exchanged in the market." *Id.* at 22.

The DOR contends that ECR's discounted cash flow (DCF) is incomplete. DOR closing brief, pg. 10:

...Any valuation method that fails to include all taxable property is fatally flawed under Montana law. Such methods should not be accepted for anything other than what they represent. In this case, the DCF used by ECR only represents the value of the land, exclusive of the improvements. The improvements are not exempt under Montana law. The Department's income approaches are done pursuant to widely accepted appraisal practices and Montana law. Furthermore, the Department's DCF includes all income attributable to the property...

BOARD'S DISCUSSION

The DOR appraisers testified that they are not experts in appraising landfills. This does not invalidate them from establishing an opinion of value. Indeed that is their duty. It is undisputed that appraising property of this type is complex in nature, and the necessary data needed to establish the market value is limited. This does not preclude the DOR appraisers from taking the necessary steps to educate themselves in order to competently appraise a complex property. It is clear to the Board that, based on the number of times the DOR's appraised value was modified as illustrated by the table below, the appraisers did not have sound appraisal data nor the expertise. It is also evident that the DOR should have sought outside appraisal assistance. The DOR appraisers

did however; utilize appraisal assistance by recognizing some of the data provided in the Jones appraisal. As indicated in the findings of fact, the DOR's January 1, 1997 appraised value was modified more than once over the course of this litigation. The Cascade County Tax Appeal Board modified the DOR's value determination, and both the taxpayer and the DOR appealed that decision to this Board. The following table illustrates a breakdown of the local board's decision and the DOR's modified values:

	Original Assessment	DOR (exhibit 19)	Local Board Decision	DOR (exhibit E)
Land:				
516.7 acres (ag)	\$99,531	\$99,531	\$99,531	\$99,531
30 acres (ag)	\$836	\$836	\$836	\$836
93.3 acres (comm.)	\$16,045,511	\$279,900	\$279,900	\$279,900
Sub Total	\$16,145,878	\$380,267	\$380,267	\$380,267
Valuation method		Cost approach	Cost approach	Income approach
Improvements:				
24' x 32' bldg		\$107,830	\$50,714	\$32,340
Utility bldg		\$22,490	\$8,113	\$7,780
50 ton scale		\$64,750	\$35,000	\$64,750
Study wells		\$133,019	\$60,000	\$133,019
Excavation		\$8,386,800	\$1,704,000	\$1,872,000
8' x 16' shed		\$1,290	\$1,290	\$1,290
3 fuel tanks		\$3,280	\$3,280	\$3,270
Drive house		\$32,500	\$32,500	\$32,500
Asphalt paving		\$109,650	\$109,650	\$109,650
Clay liner		\$155,444	\$155,444	\$541,015
Bldg permits, legal fees, construction insurance, licenses, operation permits		\$500,000	None Applied	\$500,000
Estimated additional engineering and design costs		None Applied	None Applied	\$329,761
Sub Total		\$9,517,053	\$2,159,991	\$3,627,375
Total Market Value	\$16,145,878	\$9,897,320	\$2,504,258	\$4,007,642

(1) The 546.7 acres of agricultural land valued at \$100,367 is not under appeal.

Taxpayer's counsel questioned the appraisers' lack of compliance to USPAP (Uniform Standards of Professional Appraisal

Practice). It was testified by Mr. Fontana that DOR appraisers are not bound by USPAP.

While Montana Code Annotated, Title 15, Taxation, and Administrative Rules of Montana, Title 42, Revenue, may be silent as to compliance with USPAP, the DOR appraisers and appraisals should be held to like standards. **MCA, §15-8-111. Assessment - market value standard - exceptions.** (1) *All taxable property must be assessed at 100% of its market value except as otherwise provided.* (2)(a) *Market value is a value at which property would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or to sell and both having a reasonable knowledge of relevant facts.* The ARM, Title 42, direct the appraiser on how to achieve the directive stated in **MCA, §15-8-111.**

The issue before this Board is the market value of the subject property as of January 1, 1997. To accomplish this, the Board must establish the proper appraisal methodology. When determining market value, an appraiser must consider recognized appraisal methods: sales, income and cost. In **Albright v. State of Montana** (1997), 281 Mont. 196, 933 P.2d 815, the Court addressed the term "method" as to its application in appraisal practice. The Court determined the following:

We conclude, however, based on the facts set forth previously, that the term "method" as it is used in § 15-7-112, MCA, does not refer to any single approach; rather, the term "method" refers to a consistent process for arriving at market value, the details of which may vary from place to place, depending on

available data, and which will necessarily include a number of different approaches--e.g., the market data approach, the income approach, the cost approach--or some combination of these approaches...
(Emphasis added)

Neither party disputes that insufficient sales information was available to arrive at an indication of value from the market data or sales comparison approach. The DOR has arrived at value indications from both the income and cost approaches, and relied on the cost indication based on the age of the improvements. Property Assessment Valuation (2nd Ed.), International Association of Assessing Officers (IAAO), notes:

The cost approach usually works best for newer improvements, because construction costs are easier to estimate and there is less depreciation. This approach is especially useful for appraisal of properties for which sales and income data are scarce.

The first step in the appraisal process is to determine the value of the land.

The cost approach to value provides a value indication that is the sum of the estimated land value and estimated depreciated cost of the building and other improvements. (IAAO, pg .127)

The DOR's determination of \$3,000 per acre is unsupported in its appraisal, therefore rendering that portion of the cost approach unreliable.

The Jones appraisal (exhibit 2) has established market value by means of an income approach or ground rent capitalization. The Appraisal of Real Estate, 11th Ed., (pg. 89) defines ground rent capitalization as:

Ground rent capitalization. This process is used when land rents and land capitalization rates are readily available, e.g., for appraisals in well-developed areas. Net ground rent, the net amount paid for the right to use and occupy the land, is estimated and divided by a land capitalization rate. Either actual or estimated rents can be capitalized using rates that can be supported in the market.

Based on the evidence, the Board concluded the rent received from WMM is "market rent". A potential buyer of the subject property would look to the lease when negotiating a purchase price with ECR. ECR is not the operator of the landfill and has no interest in the daily operations of the facility. ECR is compensated based on the amount of waste that is deposited in the landfill as prescribed by the lease.

The taxpayer argued that the DOR has valued the "Going Concern Value." The Appraisal Institute's Appraisal of Real Estate, 11th Edition, defines going-concern value (1996. page 26), as follows:

Going-concern value is the value of a proven property operation. It includes the incremental value associated with the business concern, which is distinct from the value of the real estate. Going-concern value includes an intangible enhancement of the value of the operating business enterprise, which is produced by the assemblage of the land, buildings, labor, equipment, and the marketing operation. This assemblage creates an economically viable business that is expected to continue. Going-concern value refers to the total value of a property, including both real property and intangible personal property attributed to business value.

Going-concern appraisals are commonly conducted for hotels and motels, restaurants, bowling alleys, industrial enterprises, retail stores, shopping centers, and similar properties. For these properties, the physical real estate assets are integral parts of an ongoing business. It may be difficult to separate the market value of the land and the building from the total value of the business, but such a division of realty and nonrealty components of value is possible and often required by federal regulations. Only qualified practitioners should undertake this kind of assignment, which must comply with appropriate USPAP standards.

The Board agrees with the taxpayer that the DOR's income approaches to value are valuing more than just the real estate components, i.e., land, buildings and site improvements.

The Board does not agree with the taxpayer's argument that the

lease between ECR and WMM takes into account, with exception of the compliance items, the market value of the structural and site improvements. Mr. Jones states in his appraisal report, "*...The most prudent manner in which to estimate the underlying real property value is to measure the present value of the future rent or lease payments to the land owner. These lease payments are also referred to as "royalties". (Emphasis added)(Exhibit 2, page 1)*

"...My assignment was to estimate the market value of the fee simple interest of the underlying real property at the subject landfill..." (Emphasis added)(Exhibit 2, page 1)

"...The estimated future net income to the land has been discounted to a present value estimate which is considered to be the market value of the fee simple interest in the underlying real estate." (Emphasis added)(Exhibit 2, page 2)

"...Improvements on the site include a 2,400 square foot metal building, a 12 x 32 utility building, an 8 x 16 square foot shed, a 50 ton platform scale, three fuel tanks, asphalt paving and a drive house..."(Emphasis added)(Exhibit 2, page 2)

The lease agreement between Gary and Sandra Campbell (lessor) and Waste Management of Montana, Inc. (lessee) contained in exhibit E in pertinent part with respect to the real estate, taxes and assessments, states:

(c) Notwithstanding the above, in the event the city of Great Falls shall at any time during the term hereof close its existing landfill, and such closure results in the majority of the

solid waste being disposed of on the Premises set forth on Exhibit A, then and in that event, the rate shall be reduced to One Dollar Fifty Cents (\$1.50) per ton, but only after Lessee, at its own expense, has installed a scale capable of weighing the garbage as it is brought into the landfill. (Emphasis added)

6. CONSTRUCTION OF IMPROVEMENTS: Lessee, at its cost, shall have the right to make any alterations, modifications, or improvements to the Premises including, without limitation (1) demolition of existing facilities without replacement thereof and renovation of existing facilities, (2) the right to construct roads, berms, ditches, stream diversions, embankments, temporary waste holding and storage facilities, office and garage facilities, laboratories, equipment shelters and any and all other facilities or land improvements necessary or required for Lessee's operations (including storage and maintenance of Lessee's waste collection vehicles). (Emphasis added)

10. TAXES, ASSESSMENTS AND UTILITIES: Lessor will promptly pay, as and when they become due, all real estate taxes and assessments against the land and existing Premises, and all levies and impositions of an nature relating to or imposed upon the Premises or Lessor's interest therein or Lessor's rights under this Lease. Lessee shall pay all taxes and assessments on any improvements built by it. Further, Lessee shall pay all increases in taxes and assessments which result from a change in the current taxing classifications based upon the activities of the Lessee on the Premises. (Emphasis added)

15. REMOVAL OF BUILDING, EQUIPMENT AND OTHER IMPROVEMENTS: The parties hereto understand and agree that title to all buildings, equipment and other improvements installed, constructed or located by Lessee upon the Premises shall remain in Lessee, and same shall at all times remain personal property regardless of the nature of fixation to the Premises. Lessee shall have the right to remove all such buildings, equipment and other improvements that Lessee has installed, constructed or located upon the Premises, provided the same shall be removed within sixty (60) days after the termination or cancellation of this Lease, or any extension thereof, for any reason. Title to any buildings, equipment or other improvements not so removed by Lessee shall vest in Lessor. (Emphasis added)

The City of Great Falls entered into a "Solid Waste Disposal Agreement" with Waste Management of Montana, Inc. in November of 1991. This agreement is a part of DOR exhibit E. On page four of this agreement it states in pertinent part:

Scope of Service

- 3.4 Exclusive Right. All waste Material collected within the jurisdiction of Municipality that is directly or indirectly to be disposed of by landfill burial shall be delivered for disposal to the Disposal Site pursuant to the terms of this Agreement.
- 3.5 Scale. WMM will have available at the Disposal Site, a scale or scales to weigh Waste Material that is transported to the Disposal Site.

Based on the agreement, the City of Great Falls disposes essentially all waste at the subject site. It's apparent the City of Great Falls is no longer operating a sanitary landfill. Based on the lease, when the City of Great Falls no longer operates a sanitary landfill, WMM will install a scale to weigh waste brought into the subject landfill. This is an indication that WMM has title to the scale that has been valued by the DOR and therefore, not owned by ECR. ECR's interest in the scale would be to accurately measure the tons of waste that are deposited at the site.

DOR's property record card (PRC), exhibit E, illustrates the following with respect to the improvements:

Improvement	Code	Year Built	Market Value
Drive house (office)	353	1987	\$ 32,500
Utility bldg. (shed)	SH3	1994	\$ 32,340
Utility bldg. (shed)	SH3	1994	\$ 7,780
Shed	RS3	1994	\$ 1,290
50 ton scale	CA1	1994	\$ 64,750
Asphalt paving	PA1	1996	\$109,650
Three fuel tanks	AU2	1990	\$ 3,270
Total			\$251,580

The parties signed the Lease between ECR and WMM on December 30, 1990. Based on the language in the lease, the improvements constructed by the lessee are property of the lessee, and real estate taxes on that property are to be paid by the lessee. According to the lease, the lessee has the ability to construct the necessary improvements to operate the business. Excluding the drive house and the fuel tanks, all other improvements were

constructed after the lease was executed. In addition, the lessee can make alterations to existing improvements. **MCA, §15-8-111.**

Assessment - market value standard - exceptions. (7) *Land and the improvements on the land are separately assessed when any of the following condition occur:*

- a. ownership of the improvements is different from ownership of the land;
- b. the taxpayer makes a written request; or
- c. the land is outside an incorporated city or town. (Emphasis added)

A review of the lease and **MCA, §15-8-111**, indicates DOR should be issuing a separate assessment notice for property owned by WMM.

ECR and the governing agencies that oversee landfill operations would not be concerned with the type of structures that a landfill operator decides to utilize. For example, if WMM made a management decision to protect their equipment with a low cost metal building verses a higher quality structure it would be purely an operator's decision. The lease between the parties alludes to this simple fact.

CONSTRUCTION OF IMPROVEMENTS: Lessee, at its cost, shall have the right to make any alterations, modifications, or improvements to the Premises including, without limitation (1) demolition of existing facilities without replacement thereof and renovation of existing facilities, (2) the right to construct roads, berms, ditches, stream diversions, embankments, temporary waste holding and storage facilities, office and garage facilities, laboratories, equipment shelters and any and all other facilities or land improvements necessary or required for Lessee's operations (including storage and maintenance of Lessee's waste collection vehicles).

The structural improvements clearly have value. At the end of

the life of the landfill, a decision will be made as to the future use of these improvements. They could remain on the property, be sold and transferred to another location or simply dismantled. Based on the lease agreement, title of these improvements passes to the lessor if the improvements are left behind. This is not the case with the compliance items. The refuse encased must remain and be monitored for an extended period of time, therefore, it becomes a part of the land, and title for the land does not transfer. It is the opinion of the Board that if there is any value attributable to the compliance items, they have been recognized in the lease payment made to ECR.

The Board agrees with the DOR that the above-mentioned structural and site improvements have not been valued in the Jones appraisal.

Both parties have established a value by the income approach. In ***Albright v. State of Montana*** (1997), 281 Mont. 196, 933 P.2d 815, the Court states, *For 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)

It is the opinion of this Board that the income approach presented by ECR's appraiser represents the market value of the real property owned by ECR (lessor), i.e. land and what has been identified as compliance items. It is also the opinion of the

Board that the structural and site improvements are owned by WMM (lessee), as listed in the following table and that the Jones appraisal, upon which the taxpayer relies, has not valued the structural and site improvements.

Improvement	Market Value
Drive house (office)	\$ 32,500
Utility bldg. (shed)	\$ 32,340
Utility bldg. (shed)	\$ 7,780
Shed	\$ 1,290
50 ton scale	\$ 64,750
Asphalt paving	\$109,650
Three fuel tanks	\$ 3,270
Total	\$251,580

CONCLUSIONS OF LAW

1. The State Tax Appeal Board has jurisdiction over this matter. **§15-2-301 MCA.**
2. **§15-8-111, MCA. Assessment - market value standard - exceptions.** (1) All taxable property must be assessed at 100% of its market value except as otherwise provided.
3. **15-2-301, 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.
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. **MCA, §15-8-111. Assessment - market value standard - exceptions.** (7) Land and the improvements on the land are separately assessed when any of the following condition occur:

d. ownership of the improvements is different from ownership of the land;

e. the taxpayer makes a written request; or

f. the land is outside an incorporated city or town.

6. **Albright v. State of Montana** (1997), 281 Mont. 196, 933 P.2d 815.

7. The Board finds that the evidence presented supports its Finding that the value be modified.

//

//

//

//

//

//

//

//

//

//

//

//

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 Cascade County by the appraisal office of that county for tax years 1997 and 1998 at the value of \$1,277,000 for the 93.3 acres that comprise the landfill. The agricultural land remains at the value as determined by the DOR. It is further ordered that the structural and site improvements with a market value of \$251,580 be assessed to Waste Management of Montana, Inc., pursuant to **MCA, §15-8-111. (7) Assessment - market value standard - exceptions.**

The appeals of the taxpayer and the DOR are therefore granted in part and denied in part and the decision of the Cascade County Tax Appeal Board is modified.

Dated this 25th day of September 2000.

BY ORDER OF THE
STATE TAX APPEAL BOARD

GREGORY A. THORNQUIST, Chairman

(S E A L)

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 September, 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:

C.W. Stocker, III
One Tandy Center, Suite 819
Fort Worth, Texas 76102

James P. Sites
CROWLEY, HAUGHEY, HANSON,
TOOLE & DIETRICH, PLLP
PO Box 2529
Billings, Montana 59103-2529

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

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

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

DONNA EUBANK
Paralegal