

BEFORE THE STATE TAX APPEAL BOARD
OF THE STATE OF MONTANA

4-BEARS, LLC,)	
)	DOCKET NO.: PT-2002-6
Appellant,)	
)	
-vs-)	FACTUAL BACKGROUND,
)	CONCLUSIONS OF LAW,
THE DEPARTMENT OF REVENUE)	ORDER and OPPORTUNITY
OF THE STATE OF MONTANA,)	<u>FOR JUDICIAL REVIEW</u>
)	
Respondent.)	

The above-entitled appeal was heard on December 13, 2002, 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.

Ted Stimac, 4-Bears, LLC (Taxpayer) presented testimony in support of the appeal. Craig Marquis, Marq-It Investment, LLC (PT-2002-7) and Bruce Miller, High Plains Property, LLC (PT-2002-8), provided additional testimony and exhibits pursuant to this appeal. The Department of Revenue (DOR), represented by Appraisers Larry Richards and Richard Sparks, presented testimony in opposition to the appeal.

The duty of the Board is to determine the market value of the Taxpayer's property based on the preponderance of the evidence. The State of Montana defines "market value" as **MCA**

§15-8-111. Assessment - market value standard - exceptions.

(1) All taxable property must be assessed at 100% of its market value except as otherwise provided. (2)(a) Market value is a value at which property would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or to sell and both having a reasonable knowledge of relevant facts.

It is true, as a general rule, that the appraisal of the Department of Revenue is presumed to be correct and that the taxpayer must overcome this presumption. The Department of Revenue should, however, bear a certain burden of providing documented evidence to support its assessed values. (Western Airlines, Inc., v. Catherine Michunovich et al., 149 Mont. 347, 428 P.2d 3, (1967)).

Based on the evidence and testimony, the market value of the property is adjusted to \$537,940. The decision of the Rosebud County Tax Appeal Board shall be modified.

FACTUAL BACKGROUND

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.
2. The land values and descriptions vary between what is recorded on the appeal form and what has been appraised

in the Howe appraisal. For purposes of this opinion, the subject property contains 239,881 square feet or 5.507 acres. The DOR's value for this area of land is \$383,475, despite what is reported in the County Board's decision.

3. The property which is the subject of this appeal is described as:

Hollister Circle Townhouses within Cimarron Subdivision, at:
 6700,02,04,06, Hollister Circle: Lots 1A, 1B, 1C & 1D, Block 7.
 6701,03,05,07, Hollister Circle: Lots 32A, 32B, 32C & 32D, Block 5.
 6711,13,15,17, Hollister Circle: Lots 32E, 32F, 32G & 32H, Block 5.
 6721,23,25,27, Hollister Circle: Lots 32I, 32J, 32K & 32L, Block 5.
 6731,33,35,37, Hollister Circle: Lots 32M, 32N, 32O & 32P, Block 5.
 6732,34,36,38, Hollister Circle: Lots 1E, 1F, 1G & 1H, Block 7.
 6741,43,45,47, Hollister Circle: Lots 32R, 32S, 32T & 32U, Block 5.
 6751,53,55,57, Hollister Circle: Lots 32V, 32W, 32X & 32Y, Block 5.
 6752,54,56,58, Hollister Circle: Lots 1I, 1J, 1K & 1L, Block 7.
 Lot 1M, Block 7, Lot 32Q, Block 5 and Lot 32Z, Block 5.

4. For the current appraisal cycle the DOR originally appraised the subject as follows:

	<u>Land</u>	<u>Improvements</u>	<u>Total</u>
1A, 1B, 1C & 1D	\$17,440	\$157,700	\$175,140
32A, 32B, 32C & 32D	\$17,613	\$157,700	\$175,313
32E, 32F, 32G & 32H	\$18,002	\$141,100	\$159,102
32I, 32J, 32K & 32L	\$17,995	\$157,700	\$175,695
32M, 32N, 32O & 32P	\$17,493	\$157,700	\$175,193
1E, 1F, 1G & 1H	\$17,542	\$157,700	\$175,242
32R, 32S, 32T & 32U	\$17,856	\$157,700	\$175,556
32V, 32W, 32X & 32Y	\$60,718	\$157,700	\$218,418
1I, 1J, 1K & 1L,	\$17,350	\$157,700	\$175,050
1M	\$78,157	\$0	\$78,157
32Q	\$60,411	\$0	\$60,411
32Z	\$43,168	\$0	\$43,168
Total	\$383,745	\$1,402,700	\$1,786,445

5. The DOR modified the values for the improvements as a result of an AB-26 Property Review Form filed by the Taxpayer. Those adjusted values reflect the following:

	<u>Land</u>	<u>Improvements</u>	<u>Total</u>
1A, 1B, 1C & 1D	\$17,440	\$126,700	\$144,140
32A, 32B, 32C & 32D	\$17,613	\$126,700	\$144,313
32E, 32F, 32G & 32H	\$18,002	\$126,700	\$144,702
32I, 32J, 32K & 32L	\$17,995	\$126,700	\$144,695
32M, 32N, 32O & 32P	\$17,493	\$126,700	\$144,193
1E, 1F, 1G & 1H	\$17,542	\$126,700	\$144,242
32R, 32S, 32T & 32U	\$17,856	\$126,700	\$144,556
32V, 32W, 32X & 32Y	\$60,718	\$126,700	\$187,418
1I, 1J, 1K & 1L,	\$17,350	\$126,700	\$144,050
1M	\$78,157	\$0	\$78,157
32Q	\$60,411	\$0	\$60,411
32Z	\$43,168	\$0	\$43,168
Total	\$383,745	\$1,140,300	\$1,524,045

6. The Taxpayer appealed the DOR's AB-26 decision to the Rosebud County Tax Appeal Board (County Board) requesting the values be adjusted to \$36,000 for the land and \$439,430 for the improvements. The Taxpayer cited the following:

Value too high compared to sale price.

7. In its September 24, 2002 decision, the County Board modified the DOR's values. The land value remained at \$340,677, but the improvement value was reduced to \$439,430, for a total property value of \$780,007.

Summarized the County Board stated the following:

2. The land is a long term investment and that we, as a board, cannot tell what long term economics of the area will be.

3. *The Department of Revenue used the cost less depreciation for the improvement valuation. They did not have an income approach or comparable sales.*
4. *Appellants did show evidence of poor income because of low occupancy and high maintenance of the buildings that are in poor repair.*

8. The Taxpayer then appealed the County Board's decision to this Board on October 25, 2002, stating:

Land value too high compared to sale and private appraisers estimate.

STATEMENT OF THE ISSUE

The issue before the Board is the market value of the subject property as of January 1, 1997, the base appraisal date for the current appraisal cycle.

TAXPAYER'S CONTENTIONS

The Taxpayer purchased the subject property from PPL, Montana, LLC. The buy/sell agreement (Exhibit 1) indicates a purchase price of \$424,427. The agreement also shows a closing date of February 1, 2002.

The Taxpayers lender, First Interstate Bank, retained Appraiser Earl L. Howe to conduct a real estate appraisal (Howe Appraisal) on the subject property for mortgage purposes. The Howe Appraisal determined a value of \$475,000 as of January 14, 2002. The Howe Appraisal is an exhibit that was presented before the County Board. Summarized, the Howe Appraisal indicates the following values for the property:

<u>Cost Approach</u>	
Total improvement replacement cost	\$2,652,039
Landscaping	\$95,666
Total replacement cost	\$2,747,705
Total Depreciation 83%	(\$2,280,595)
Depreciated value	\$467,110
Land value	\$36,600
Cost Approach Value	\$503,710

<u>Income Approach</u>	
Potential Gross Income:	
18-3 bedroom units @ \$510 per unit X 12	\$110,160
18-2 bedroom units @ \$450 per unit X 12	\$97,200
Potential Gross Income:	\$207,360
Less: Gross Income less vacancy & credit loss - 20%	\$41,472
Gross Income	\$165,888
Less: Expenses	
Taxes	\$14,909
Insurance	\$11,142
Management 6% of PGI	\$12,442
Accounting/legal	\$4,500
Repairs, maintenance & replacement @ \$500 per unit	\$18,000
Utilities, water, sewer & electric	\$35,144
Total expenses	\$96,137
Net operating income	\$69,751
Capitalization Rate - 15%	
Income Approach Value (NOI/Cap Rate)	\$465,007

<u>Market Approach</u>	
2 Story four plex buildings	
4352 S.F. each building X \$10.30/S.F. X 9 =	\$403,430
35 garages @ \$1000/each =	\$36,000
Total value per 2 sty buildings less land	\$439,430
Total contribution value of improvements	\$439,430
Land contribution value	\$36,600
Concluded value from Market Approach	\$476,030

It was testified that the seller, PP&L Montana, LLC, was motivated, inasmuch as PP&L Montana, LLC was pursuing to relinquish their interests in property management and focus

their attention on power generation. It is also the position of the taxpayer that PP&L Montana, LLC, was not forced to sell the property.

The property was listed for sale with Alan Lees Realty of Billings, Montana and was on the market for one day. The Taxpayer made an offer and the seller accepted.

DOR'S CONTENTIONS

The DOR's land value for the subject property was established from sales that occurred prior to 1997. DOR Exhibit B (PT-2002-08) is the Computer Assisted Land Pricing (CALP) model used to value the neighborhood for which the subject is located. Summarized the exhibit illustrates the following:

Neighborhood	Cimmeron & Castle Rock Sub
Appraisal Date	1-Jan-96
Base Lot Size (SF)	12,000
Base Rate Per Square Foot	\$1.64
Residual Rate Per Square Foot	\$1.26

Land Sales	Sale Price	Lot Size (SF)	Time Adjusted Sale Price	Time Adjusted \$/SF
Sale #1	\$65,700	50,515	\$66,888	\$1.32
Sale #2	\$33,500	25,000	\$33,601	\$1.34
Sale #3	\$20,930	14,950	\$21,066	\$1.41
Sale #4	\$63,000	50,064	\$64,803	\$1.29
Sale #5	\$16,000	10,171	\$17,085	\$1.68
Sale #6	\$42,716	30,512	\$44,582	\$1.46
Sale #7	\$42,419	30,351	\$44,347	\$1.46
Sale #8	\$51,783	34,522	\$54,357	\$1.57

Because each duplex has its own legal description, each lot was valued by means of the CALP model. The subject

consists of twelve separate lots that range in size from 10,884 square feet to 48,848 square feet. The DOR values for each lot are as follows:

Lot	Value	Size	\$\$SF
1A, 1B, 1C & 1D	\$17,440	10,900	\$1.60
32A, 32B, 32C & 32D	\$17,613	11,008	\$1.60
32E, 32F, 32G & 32H	\$18,002	11,251	\$1.60
32I, 32J, 32K & 32L	\$17,995	11,247	\$1.60
32M, 32N, 32O & 32P	\$17,493	10,933	\$1.60
1E, 1F, 1G & 1H	\$17,542	10,964	\$1.60
32R, 32S, 32T & 32U	\$17,856	11,160	\$1.60
32V, 32W, 32X & 32Y	\$60,718	37,949	\$1.60
1I, 1J, 1K & 1L,	\$17,350	10,884	\$1.59
1M	\$78,157	48,848	\$1.60
32Q	\$60,411	37,757	\$1.60
32Z	\$43,168	26,980	\$1.60
	<u>\$383,745</u>	<u>239,881</u>	<u>\$1.60</u>

It is the opinion of the DOR that the sales illustrated on the CALP model support the final determination of value for each of the individual lots and therefore support a total market value of \$383,745.

BOARD DISCUSSION

The market values that have been the subject to the appeal as illustrated on the appeal form are:

	<u>DOR</u>	<u>Taxpayer</u>	<u>County Board</u>
Land Value	\$340,577	\$36,000	\$340,677
Improvement Value	\$1,140,300	\$439,430	\$439,430
Total Value	<u>\$1,480,877</u>	<u>\$475,430</u>	<u>\$780,107</u>

As previously noted, within this discussion the Board will recognize a DOR land value of \$384,745 and Taxpayer value of \$36,000.

The County Board reduced the value of the improvements to

\$439,430 as requested by the Taxpayer. Although it appears that the County Board increased the land value by \$100, the attached decision states they adopted the DOR value. The Board considers this a mere typographical error.

The County Board recognized the Howe Appraisal in establishing the value of the improvements. The County Board adopted the value from the sales comparison approach of \$439,430.

The Taxpayer appealed that decision because the County Board's determination of land value of \$383,745 exceeded the value of \$36,600 as determined in the Howe Appraisal.

Section 15-7-111, MCA, and **ARM 42.18.106,** requires that the DOR appraise all property subject to Montana taxation as of a specific base date in order to provide optimum equality among similarly situated taxpayers. The base date for the current appraisal cycle is January 1, 1997. The DOR testified that the market conditions in Colstrip have not changed significantly from 1996 to the present. That would suggest the market value for the subject property would be relatively the same today as it was in 1996. The previous owner of the subject property was the Montana Power Company (MPC) and there is nothing in the record to indicate that MPC ever questioned the DOR's values.

It was testified that the seller was motivated to sell

and the property was only on the market for one day. It was also testified from the buyers that they received a "good deal." An independent fee appraisal was conducted on the property to assist the Taxpayer in obtaining financing. As previously, noted the final conclusion of value in the Howe Appraisal was \$475,000, with a date of value of January 14, 2002. The value established in the Howe Appraisal exceeded the purchase price by approximately \$50,500. This in itself would support the transaction as being a good deal. The taxpayer has not requested this Board to set the value at what was paid for the property, but rather the value as determined in the Howe Appraisal.

The administrative rules allow for consideration of a sales price as an indication of value as well as the use of an independent fee appraisal. **ARM 42.20.454** CONSIDERATION OF SALES PRICE AS AN INDICATION OF MARKET VALUE and **ARM 42.20.455**, CONSIDERATION OF INDEPENDENT APPRAISALS AS AN INDICATION OF MARKET VALUE.

The DOR, pursuant to statute, completed reappraisal as of December 1996. **15-7-111. Periodic revaluation of certain taxable property.** (1) *The department 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). The DOR testified that the market conditions or economy of Colstrip has not changed from the time the DOR conducted its appraisal in 1996 to the time the Taxpayer purchased the property in 2002. Based on the testimony of the Taxpayer, the economy of Colstrip is not a positive one. There have been considerable layoffs at the power facility, which have resulted in higher vacancies in the subject and competing multi-family projects. The DOR does not dispute that Colstrip's economy has struggled over the years.

The appeal before this Board is directed at the value of the land. The subject property consists of twelve individual lots that total 5.5 acres of land. The Taxpayer purchased the property as a whole and is operating it as a multi-family project. The DOR's CALP model supports a land value for the individual lots but does not support a total land area of 5.5 acres. The DOR's land value for the smaller lots is also supported by the three sales identified in the Howe Appraisal.

Property	Sale Price	Howe Appraisal		Date of Sale
		Size	\$SF	
Sale #1	\$30,015	20,010	\$1.50	Jun-99
Sale #2	\$16,000	9,057	\$1.77	Feb-99
Sale #3	\$63,000	45,000	\$1.40	Jan-95

Within the Howe Appraisal, it states the following with respect to value of the land:

None of the previous sales had similar land qualities as (sic) subject. Most notable difference is the overall size. Subject has a total area of 212,591 S.F. or 4.88 acres. The above sales indicated a range of values for the subject site of \$1.40/S.F. to a high \$1.76/S.F. Sales 1 & 2 were residential and Sale 3 was commercial. Other area sales are indicating undeveloped acreage tracts from \$1,000 to \$2,000/acre.

With limited market data, justification for a realistic land value is somewhat suspect. An (sic) Cimarron lot at 10,000 S.F. should have a value of \$16,000 but would require a substantial downward adjustment considering the overall size of the total property being appraised.

Subjects 4.88 acre site was concluded at \$7,500/acre = \$36,600.

The Board agrees that a size adjustment is warranted when comparing a 5.5-acre property with much smaller properties. There is nothing contained within the Howe Appraisal that provides support for the method(s) that were used to arrive at a value of \$7,500 per acre, nor was Mr. Howe present at the hearing. It is the opinion of the Board that land value as determined in the Howe Appraisal is unsupported and therefore cannot be relied upon. Just as with the Howe Appraisal, the DOR's determination of value for the land is unsupported for a property that consists of 5.5 acres. The subject property does contain twelve separate lots, but it cannot be ignored that the property is being managed and was purchased as a single multi-family facility. Therefore, a size adjustment is warranted when comparing the smaller lot sales to the subjects 5.5 acres. The DOR provided no support for a land value of \$383,475.

It is necessary for the Board to analyze the sale of the property along with the Howe appraisal in arriving at a market value for the property. The value indications are:

Sale Price	\$424,427
Howe - Cost Approach	\$503,710
Howe - Sales Comparison Approach	\$476,030
Income Approach	\$465,007
Final Value Conclusion	\$475,000

The value indications range from a low of \$424,427, the sale price, to a high of \$503,710, the cost approach. Because of the seller's motivation, the sale would suggest the lower end of range. It's difficult to give the cost approach any credence because the appraiser applied a depreciation factor of 83% with no support whatsoever. In addition, the cost approach values the land separately and that issue has been previously addressed. Within the sales comparison approach, the Howe Appraisal used one sale to arrive at an indication of value. This sale did contain multi-family dwellings, but also included 132 mobile home spaces on 23.3 acres of land. Because of this additional component, the comparability of this property and the subject must be questioned. Also, this approach uses the appraiser's land value.

The Board has before it three income approaches: the subject, High Plains Property, LLC (PT-2002-8), and Marq-It Investments, LLC (PT-2002-7). One problem with the Howe Appraisal's income approaches for ad valorem tax purposes is

the inclusion of property taxes as an operating expense. The DOR has rules for valuing a property by means of the income approach.

ARM 42.20.108 INCOME APPROACH (3) The department will use generally accepted procedures as outlined by the International Association of Assessing Officers in their text titled "Property Assessment and Appraisal Administration" when determining normal net operating income...

- (c) **Items which are not allowable expenses are** depreciation charges, debt service, **property taxes** and business expenses other than those associated with the property being appraised.
- (d) An effective tax rate will be included as part of the overall capitalization rate. (emphasis supplied)

According to International Association of Assessing Officers:

The effective tax rate can be developed for any class of property in a jurisdiction by multiplying the appropriate level of assessment by the current tax rate expressed as a decimal or a percentage. The resulting value conclusion is not prejudiced by a predetermined value judgment as it is when taxes are included as an expense item.¹

The tax rate or taxable percentage for commercial property for tax year 2002 is 3.46% and the mill levy for Colstrip is 213.24. The calculation for the effective tax rate (ETR) is:

Tax Rate	.0346
X Mill Levy (Colstrip)	X .21324
Effective Tax Rate	.007378

The Howe Appraisal applied a capitalization rate of 15% for the subject property. Adding the above effective tax rate to the 15% would suggest an overall capitalization rate for ad

¹ International Association of Assessing Officers., *Property Assessment Valuation*, Chicago, Ill., 1977, p. 242

valorem tax purposes of 15.74% rounded. Recognizing the income and expenses, with the exception of property taxes, contained in the Howe Appraisal, the value from the income approach would suggest the following:

Income Approach	
Potential Gross Income:	
18-3 bedroom units @ \$510 per unit X 12	\$110,160
18-2 bedroom units @ \$450 per unit X 12	\$97,200
Potential Gross Income:	\$207,360
Less: Gross Income less vacancy & credit loss - 20%	\$41,472
Gross Income	\$165,888
Less: Expenses	
Insurance	\$11,142
Management 6% of PGI	\$12,442
Accounting/legal	\$4,500
Repairs, maintenance & replacement @ \$500 per unit	\$18,000
Utilities, water, sewer & electric	\$35,144
Total expenses	\$81,228
Net operating income	\$84,660
Capitalization Rate - 15%	15.00%
Effective Tax Rate (ETR)	0.74%
Total Capitalization Rate	15.74%
Income Approach Value (NOI/Cap Rate)	\$537,940

Pursuant to administrative rules, the DOR has the ability to value property by means of the income approach.

ARM 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.

(3) If the Department is not able to develop an income model with a valid capitalization rate based on the 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 approach or, if appropriate,

market approach value. The final valuation is that which most accurately estimates market value.

The DOR testified that they were unable to collect sufficient income and expense information to properly estimate the value for multi-family property in Rosebud County. Therefore, the DOR defaulted to the cost approach as a means of establishing value. The County Board reduced the value of the improvements from \$1,140,300 to \$439,430 and the DOR did not appeal that decision.

The income approach used in the Howe Appraisal valued the property as a whole and not the separate components, i.e. land and improvements.

It is the opinion of the Board that the best indication of value for the subject property as a total is \$537,940. Neither the Taxpayer nor the DOR provided credible evidence to support their respective land values. The Board will set the value of the improvements at \$439,430 as determined by the County Board. The land value is \$98,510: the difference between the total property value of \$537,940, and the improvement value of \$439,430.

As previously discussed, the amount of land that encompasses the subject property varies from the DOR's property record cards and the Howe appraisal. The dispute seems to be with Lot 32Z. The Howe Appraisal, page 6,

indicates this lot consists of 10,969 SF, whereas the DOR's property record card suggests 26,980 SF. While this does not affect this opinion, it may affect future appraisals for this property. Therefore, it may be in the best interest of the Taxpayer to verify what he is being taxed on.

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. **15-6-134. Class four property -- description -- taxable percentage.** (1) Class four property includes: (g) (i) commercial buildings and the parcels of land upon which they are situated.
5. **42.20.107 Valuation Methods For Commercial Properties.**
6. **42.20.108 Income Approach.**
7. **42.20.109 Capitalization Rates.**
8. It is true, as a general rule, that the appraisal of the

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 local Department of Revenue office at the values of \$98,510 for the land and \$439,430 for the improvements, as determined by this Board, for tax year 2002. The appeal of the Taxpayer is therefore granted in part and denied in part and the decision of the Rosebud County Tax Appeal Board is modified.

Dated this 15th day of January, 2003.

BY ORDER OF THE
STATE TAX APPEAL BOARD

(S E A L)

GREGORY A. THORNQUIST, Chairman

JEREANN NELSON, Member

MICHAEL J. MULRONEY, 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 15th day of January, 2003, 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:

4-Bears, LLC
P.O. Box 752
Colstrip, Montana 59323

Rosebud County Appraisal Office
C/O Richard Sparks
Rosebud County
County Courthouse
Forsyth, Montana 59327

Yellowstone County Appraisal Office
C/O Larry Richards
P.O. Box 35013
Billings, Montana 59107-5013

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

Harlin Steiger
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DONNA WESTERBUR
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