

BEFORE THE STATE TAX APPEAL BOARD

OF THE STATE OF MONTANA

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GLACIER MOTOR INN, INC.,	)	
	)	DOCKET NO.: PT-1997-68
Appellant,	)	
	)	
-vs-	)	
	)	
THE DEPARTMENT OF REVENUE	)	FINDINGS OF FACT,
OF THE STATE OF MONTANA,	)	CONCLUSIONS OF LAW,
	)	ORDER and OPPORTUNITY
Respondent.	)	<u>FOR JUDICIAL REVIEW</u>

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The above-entitled appeal was heard on the 3rd day of March, 1998, in the City of Cut Bank, 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 given as required by law. The taxpayer, represented by attorney Dale Keil and owner John Romain, presented testimony in support of the appeal. The Department of Revenue (DOR), represented by appraisers Dan South, Rich Dempsey, and Kevin Watterud, presented testimony in opposition to the appeal. Testimony was presented, exhibits were received and 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:

## FINDINGS OF FACT

1. Due, proper and sufficient notice was given of this matter 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:

Lots 1-8 & 8' of lot 9, Blk 6, Cut Bank  
Original Townsite, Cut Bank, Glacier  
County, MT, and the Improvements thereon.

3. For the 1997 tax year, the DOR appraised the subject property at a value of \$54,180 for the land and \$436,200 for the improvements. The personal property is valued at \$33,815 for 1997 and is not a subject of this appeal. The DOR reduced the value of the improvements to \$232,500 subsequent to an AB-26 Property Adjustment form filed by the taxpayer.

4. The taxpayer appealed to the Glacier County Tax Appeal Board requesting a reduction in value to \$9,363 for the land and \$98,456 for the improvements.

5. The County Board denied the appeal and upheld the values the DOR had determined as the result of the AB-26 review.

6. The taxpayer then appealed that decision to this Board.

7. A history of the values for the subject property (land & improvements) for the current appraisal cycle are as follows (ex. #1 pgs 3 & 4):

Assessment Notice dated 8/30/97

	1997 Reappraised Value	1996 Value Before Reappraisal	1997 Phase-in Value
Land	\$ 54,180	\$ 33,540	\$ 33,952
Improvements	<u>\$436,200</u>	<u>\$353,100</u>	<u>\$354,762</u>
Total	<u>\$490,380</u>	<u>\$386,640</u>	<u>\$388,714</u>

Revised assessment notice

	1997 Reappraised Value	1996 Value Before Reappraisal	1997 Phase-in Value
Land	\$ 54,180	\$ 33,540	\$ 33,952
Improvements	<u>\$232,500</u>	<u>\$353,100</u>	<u>\$350,688</u>
Total	<u>\$286,680</u>	<u>\$386,640</u>	<u>\$384,640</u>

8. 42.20.501 ARM, Definitions Associated With Valuation Phase-in. The following definitions are necessary to implement the provisions 15-6-134, 15-7-102 and 15-7-111, MCA, as amended in Ch. 463, L. 1997:

(1) "1996 tax year value" means the market value of a property which appears on the 1996 assessment notice of that property.

(2) "Current year phase-in value" is the difference between the value before reappraisal (VBR) and the reappraisal value times the phase-in percentage, added to the VBR. The current year phase-in value is the amount subject to tax each year and is determined by the following formula:

Current year phase-in value =  
[(reappraisal (REAP) value - VBR) x phase-in percentage]  
+ VBR (emphasis added)

The values before this Board are those illustrated on the revised assessment notice. The calculation to determine the phase-in value for the subject property is as follows:

<u>Land</u>	
Reappraisal value	\$54,180
less: VBR	<u>\$33,540</u>
Value change	\$20,640
Value change	\$20,640
Phase-in percentage 2%	<u>x 2%</u>
Phase-in amount	\$ 413
VBR	\$33,540
Phase-in amount	<u>\$ 413</u>
Phase-in value	\$33,952
<u>Improvement</u>	
Reappraisal value	\$232,500
less: VBR	<u>\$353,100</u>
Value change	-\$120,600
Value change	-\$120,600
Phase-in percentage 2%	<u>x 2%</u>
Phase-in amount	-\$ 2,412
VBR	\$353,100
Phase-in amount	<u>-\$ 2,412</u>
Phase-in value	\$350,688

9. There are delinquent property taxes on the subject property from prior years.

TAXPAYER'S CONTENTIONS

1. Mr. Romain testified that the property was

purchased in July of 1989 for \$240,000 on a contract-for-deed.

The taxpayer allocated the components of the purchase as follows (ex. #1 pg. 2):

Land	\$ 5,468
Pavement	\$ 4,168
Hotel Building	\$79,824
Cafe/Bar Building	\$ 8,716
Hotel equipment & Fixtures	\$82,336
Sheets, Blankets, Towels, Dishes & Televisions	\$28,500
Cafe Equipment	\$16,104
Bar Equipment	\$ 4,884
Liquor License	<u>\$10,000</u>
 Total Sales Price Allocation & Replacement Value Costs	 \$240,000
 Value of Land & Buildings	 \$98,176

2. Mr. Romain arrived at his value indication by applying a straight-line depreciation method of 2 1/2% per year to the allocated purchase price for the structures as follows (ex. #1 pg. 1):

	<u>1989 Value</u>	<u>Dep. 40 yr. 2 1/2%</u>	<u>Dep. Value</u>
Hotel Building	\$79,824		
Cafe-Bar Bd.	<u>\$ 8,716</u>		
	\$88,540	\$2,213	\$86,327
	1990		
Hotel-Cafe-Bar Bd.	\$86,327	\$2,213	\$84,114
	1991		
Hotel-Cafe-Bar Bd.	\$84,114	\$2,213	\$81,901
	1992		
Hotel-Cafe-Bar Bd.	\$81,901	\$2,213	\$79,688
	1993		
Hotel-Cafe-Bar Bd.	\$79,688	\$2,213	\$77,475
	1994		

Hotel-Cafe-Bar Bd.	\$77,475		
addition to Bar	<u>\$28,964</u>		
	\$106,439	\$2,661	\$103,778
	1995		
Hotel-Cafe-Bar Bd.	\$103,778	\$2,661	\$101,117
	1996		
Hotel-Cafe-Bar Bd.	\$101,117	\$2,661	\$98,456
Land			\$ 5,468
Pavement			<u>\$ 4,168</u>
			\$108,092

3. Mr. Romain testified a value of \$131,497 was presented in an attempt to settle with the DOR. (ex. #1 pg 5)

Mr. Romain stated that the DOR did not agree with his value and that's what began the appeal process.

4. Mr. Romain testified that, even after the AB-26 reduction to \$286,680 from \$386,640, he is still paying taxes on land and improvements valued at \$384,640.

5. Mr. Romain testified that the value of old hotel properties do not carry the value that they did in prior years.

In addition, the subject property is not affiliated with a national reservation system, i.e. AAA, Best Western, etc.. Mr. Romain testified that in order to become affiliated with a national reservation system, upgrading of approximately \$7,000 per room would be needed.

7. Mr. Romain testified that the occupancy percentage for the subject property is approximately 14%.

8. The subject property was purchased on a contract for deed. The contract was modified by the buyers and sellers on February 10th, 1998.(ex 4 pg 3 & 4) The terms of the new contract are:

Purchase price: \$210,000  
 Interest rate: 7 1/2%  
 Term: 11 years with balance due in full.  
 Payments: \$800 on the 15th and 30th of each month.

Mr. Romain testified that, based on this new agreement (ex. 4 pg 2), the current value for the subject land and improvements is:

Total purchase price - 2/10/98	\$210,000
Less current assessment of furniture & fixtures	-\$ 33,815
	<u>\$176,185</u>
Less value of liquor and gaming license	-\$ 30,000
Current value of land & improvements	<u>\$146,185</u>

9. Mr. Romain testified that the subject property has continuously lost money over the years. Federal tax forms for years 1988 thru 1994 are inclusive of the income from the hotel/motel, restaurant and bar and in summary illustrate the following:

Form 1120S

**1988**

Line 6	Total Income	\$122,780
Line 20	Total deductions	<u>(\$165,810)</u>
Line 21	Ordinary income (loss)	<u>(\$ 43,030)</u>

**1989**

Line 6	Total Income	\$260,661
Line 20	Total deductions	<u>(\$360,092)</u>
Line 21	Ordinary income (loss)	(\$ 99,431)

**1990**

Line 6	Total Income	\$358,912
Line 20	Total deductions	<u>(\$455,194)</u>
Line 21	Ordinary income (loss)	(\$ 86,282)

**1991**

Line 6	Total Income	\$363,878
Line 20	Total deductions	<u>(\$429,773)</u>
Line 21	Ordinary income (loss)	(\$ 65,895)

**1992**

Line 6	Total Income	\$555,337
Line 20	Total deductions	<u>(\$602,753)</u>
Line 21	Ordinary income (loss)	(\$ 47,416)

**1993**

Line 6	Total Income	\$463,156
Line 20	Total deductions	<u>(\$517,168)</u>
Line 21	Ordinary income (loss)	(\$ 54,012)

**1994**

Line 6	Total Income	\$343,620
Line 20	Total deductions	<u>(\$367,376)</u>
Line 21	Ordinary income (loss)	(\$ 23,756)

Mr. Keil stated that the amount of the expenses are understated because the principle, interest and real estate taxes are not paid in full.

10. Mr. Romain testified that over half of the buildings in downtown Cut Bank are vacant. He stated "if you're going to tax the people out of business somebody else is going to have to pick it up sooner or later".

11. Mr. Romain testified that approximately 52 rooms are in a rentable condition, with the rates ranging from \$17 to



\$40 per night.

12. Mr. Romain testified when oil industry activity suffered a significant decline in the Cut Bank area, the hotel occupancy rate dropped dramatically.

13. Mr. Romain testified that the property is located one block off of Highway 2; therefore, the property doesn't have good exposure to customer traffic.

14. Mr. Keil stated that the city of Conrad is, in most aspects, similar to Cut Bank. He testified to a sale of the Conrad Hotel which sold at public auction by Pondera County for \$1,400 in 1989. This property is similar to the subject property in terms of age and original use, i.e. bar and restaurant. The sale did not include any personal property.

13. Mr. Keil stated, "It's a travesty of justice if there's really a reduction of that amount, then it phases-in at 2%, you're going to lose for the next 50 years."

#### DOR CONTENTIONS

1. Mr. Dempsey testified that the DOR adjusted the market value of the subject property through the AB-26 process from \$490,380 to \$286,680 and a revised assessment notice was generated. (exhibit A) The overall depreciation was increased, and the quality grade for the property was reduced.

2. The DOR presented the property record cards for the subject property. (exhibit B) In summary this exhibit illustrates the following:

Card #1 of 3

Land Data

width - 258'                      depth - 140'  
unit price - \$210 FF      land value - \$54,180

Building Data

Year built - 1920,      Effective age - 1920  
Number of units - 34, Structure type - hotel/motel  
Grade - low

Basement

Size - 18' x 58'  
Use - (91) unfinished basement  
Physical condition - (1) poor  
Functional utility - (2) fair  
Percent good - 20%  
RCNLD<sup>1</sup> - \$3,710

Level 1

Size - 48' x 60'  
Use - (12) hotel  
Physical condition - (1) poor  
Functional utility - (2) fair  
Percent good - 20%  
RCNLD - \$42,880

Level 1

Size - 51' x 80'  
Use - (12) hotel  
Physical condition - (2) fair  
Functional utility - (2) fair  
Percent good - 35%  
RCNLD - \$79,890

Level 1

Size - 3,872 sf  
Use - (35) tavern/bar  
Physical condition - (2) fair  
Functional utility - (2) fair  
Percent good - 35%

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<sup>1</sup> RCNLD - Replacement Cost New Less Depreciation

RCNLD - \$69,930

Level 1

Size - 21' x 33'  
Use - (45) warehouse  
Physical condition - (2) fair  
Functional utility - (2) fair  
Percent good - 35%  
RCNLD - \$8,530

Level 2

Size - 48' x 60'  
Use - (12) hotel  
Physical condition - (1) poor  
Functional utility - (2) fair  
Percent good - 20%  
RCNLD - \$31,200

Level 2

Size - 51' x 80'  
Use - (12) hotel  
Physical condition - (1) poor  
Functional utility - (2) fair  
Percent good - 20%  
RCNLD - \$42,680

Level 3

Size - 48' x 60'  
Use - (12) hotel  
Physical condition - (1) poor  
Functional utility - (2) fair  
Percent good - 20%  
RCNLD - \$31,200

Card #2 of 3

Building Data

Year built - 1957, Effective age - 1957  
Number of units - 20, Structure type - hotel/motel  
Grade - fair minus

Level 1

Size - 25' x 140'  
Use - (12) hotel  
Physical condition - (2) fair  
Functional utility - (2) fair  
Percent good - 35%  
RCNLD<sup>2</sup> - \$77,930

Level 2

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<sup>2</sup> RCNLD - Replacement Cost New Less Depreciation

Size - 25' x 140'  
 Use - (12) hotel  
 Physical condition - (2) fair  
 Functional utility - (2) fair  
 Percent good - 35%  
 RCNLD - \$69,910

Card #3 of 3

Building Data

Year built - 1965, Effective age - 1965  
 Number of units - 8, Structure type - hotel/motel  
 Grade - fair minus

Level 1

Size - 24' x 36'  
 Use - (12) hotel  
 Physical condition - (2) fair  
 Functional utility - (2) fair  
 Percent good - 35%  
 RCNLD<sup>3</sup> - \$20,950

Level 2

Size - 24' x 36'  
 Use - (12) hotel  
 Physical condition - (1) poor  
 Functional utility - (1) poor  
 Percent good - 10%  
 RCNLD - \$5,410

3. Mr. Watterud presented the computer assisted land pricing (CALP) model for the subject neighborhood, which determined a front foot price of \$210. (exhibit F) Mr. Watterud testified that four sales were used to determine the price per front foot. In summary, this exhibit illustrates the following:

Sale #	Sq. Ft.	Price	Date	\$/SF	MRA Est.	MRA/
					Sq. Ft.	Sq. Ft.
#1	4,700	\$ 4,700	7/92	\$1.57	7,048	\$1.50
#2	36,895	\$45,000	9/93	\$1.22	55,593	\$1.51
#3	38,000	\$72,380	3/95	\$1.90	57,259	\$1.51
#4	38,000	\$52,380	5/92	\$1.38	57,259	\$1.51

Regression Output:

Constant -38.3119  
 Std Err of Y Est 13505.21  
 R Squared 0.835377

<sup>3</sup> RCNLD - Replacement Cost New Less Depreciation

No. of Observations	4
Degrees of Freedom	1.252390 2
Std Err of Coef.	0.816609
X Coefficients(s)	1.507829
Std Err of Coef.	0.473303

Conclusion:

Front Foot=  
Standard Lot Size is 50 x 140 or 7,000 Sq Ft  
 $\$1.50 \times 7,000 = \$10,500$   
 $\$10,500 / 50 = \$210/\text{FF}$

4. Mr. Watterud testified the sales in the CALP model are superior to the subject with respect to their location along U.S. Highway 2, but no adjustment factor was considered since there was an inadequate number of sales to identify accurately an adjustment factor. Mr. Watterud stated two sales, McDonald's and Town Pump, were excluded from the CALP model because of the exorbitant purchase prices. These sales are located along Highway 2, near the shopping mall. In addition, Mr. Watterud stated these sales are located in the same CALP neighborhood as the subject property.

5. Mr. Watterud testified that the land value for properties along the highway leading to the town of Santa Rita is \$150 FF or \$1.05 SF.

6. Mr. Watterud testified that the availability of vacant land ready for development in the area of the subject is very limited.

7. Exhibit H is a comparison between the subject

property and other motel properties in Cut Bank. This exhibit contains numerous mathematical errors. Summarized, the exhibit illustrates the following:

Property	Grade	Land	Units	Total Bld Area	Unit Price	Cafe
Subject	Low	36,120 SF \$1.50 SF \$54,180	62	25,528 SF \$9.11 SF \$232,500	\$3,750	Yes
Glacier Gateway	Fair	28,619 SF* \$0.34 SF* \$ 9,855*	29	18,726 SF* \$11 SF* \$312,000*	\$10,759	No
Northern Motor Inn	Average +	71,438 SF* \$1.19 SF* \$85,280*	61	26,576 SF \$28.35 SF \$753,500	\$12,352	No

\* denotes a mathematical error in the exhibit. It is not known which figure is incorrect since the starting point is also an unknown.

8. Mr. South testified the Gateway Motor Inn is located on the easterly end of Cut Bank in neighborhood description B, and neighborhood B also encompasses an area along the highway north of Cut Bank to Santa Rita. Mr. South testified that the Northern Motor Inn is located along Highway 2 in the vicinity of the shopping center, and it is in neighborhood description A which is the same neighborhood description as the subject property.

#### BOARD'S DISCUSSION

Mr. Romain submitted to the Board unsolicited

information after the hearing was concluded. The Board will not consider this information in the decision.

The DOR presented what has been identified as the CALP model for the subject neighborhood 2A (exhibit F). This model indicates the standard lot size for this neighborhood is 50' X 140' or 7,000 SF. The subject lot is 258' X 140 or 36,120 SF. Typically CALP models have an adjustment for size. No evidence or testimony was presented to indicate that the DOR considered an adjustment for size. It was testified that the Northern Motor Inn is located within the same CALP neighborhood, 2A, as the subject property, but the land price for that property is \$1.19 SF. It was also testified that the Northern Motor Inn's location is superior to that of the subject. It is the Board's opinion that based on the evidence and testimony the price per square foot for the subject property should not exceed that of the Northern Motor Inn.

The methods of appraisal normally used to determine value are the cost approach, the income approach and the sales comparison approach. The DOR has used the cost approach to determine the value for the subject property.

Albright v. State of Montana, 281 Mont. 196 (1997), According to a Department of Revenue public document entitled, "What is CAMAS?" CAMAS uses three approaches to valuing property: (1) the cost approach, (2) the market

data approach, and (3) the income approach. The cost approach involves estimating the depreciated cost of reproducing or replacing the building and site improvements. Depreciation is deducted from this cost for loss in value caused by physical deterioration and functional or economic obsolescence. To this depreciated cost is added the estimated value of the land. The widest application of the cost approach is in the appraisal of properties where the lack of adequate market and income data preclude the reasonable application of other traditional approaches. (emphasis supplied)

Mr. Keil requested that the appraisal by the DOR be thrown out based on a lack of foundation for the amount of depreciation applied to the subject property and which is based upon a computer model in which Mr. Dempsey had no involvement.

The Board will not consider the appraisal be thrown out based on Mr. Dempsey's lack of involvement in the development of the Computer Assisted Mass Appraisal System (CAMAS). There are various national appraisal services utilized to determine depreciation. Whichever appraisal service the DOR utilizes they are adopted and applied statewide. Mr. Dempsey or other department appraisers might not be individually involved with the development of the depreciation tables nor with the intricacies of the system but that does not negate the use by DOR appraisers. CAMAS is the same appraisal system used statewide by the DOR; therefore, uniformity has been taken into account.

15-1-201 MCA. Administration of revenue laws. (1)(a) The



department has general supervision over the administration of the assessment and tax laws of the state, except Title 15, chapters 70 and 71, and over any officers of the state relating to taxation to the end that all assessments of property are made relatively just and equal, at true value, and in substantial compliance with the law. The department may make rules to supervise the administration of all revenue laws of the state and assist in their enforcement. (emphasis supplied)

ARM 42.18.106 1997 MONTANA REAPPRAISAL PLAN (1) The 1997 Montana reappraisal plan consists of seven parts: residential appraisal, commercial appraisal, agricultural and timber appraisal, industrial appraisal, certification and training requirements, manuals, and progress reporting. The Montana reappraisal plan implements the legislature's cyclical reappraisal program set forth in 15-7-111, MCA.

(2) The Montana reappraisal plan provides for the valuation of residential property, commercial property, agricultural and timberland property, and industrial property. A computer assisted mass appraisal system (CAMAS) is used to determine a new appraised value for each parcel of land, each residential improvement, each commercial improvement, each agricultural improvement, and each industrial improvement. The department will enter the new appraised values on the tax rolls for tax year 1997. (emphasis supplied)

Mr. Dempsey, as the appraiser, has the authority to modify the appraisal of the subject property. He did so by changing the overall depreciation and the quality grade of the structures. The information needed to support the change was obtained by Mr. Dempsey through an on-site inspection of the property in addition to discussions with the taxpayer. It is the Board's opinion that the DOR has made an adequate attempt to determine the overall depreciation for the subject property and it is indicative of the amount of depreciation or percent good illustrated on exhibit B.

The method of depreciation recognized by the taxpayer is that of a straight-line method. The Dictionary of Real Estate Appraisal, 3rd Edition, defines straight-line depreciation as:

A depreciation method in which depreciable assets, estimated at cost or on some other basis, are written off in equal amounts over the estimated useful life of the assets.

It is the Board's opinion that the manner in which the taxpayer has employed this straight-line method to arrive at a depreciation allowance is best recognized for accounting purposes and can be used as an amount of depreciation charged against earnings to write off the cost of an asset.

The DOR has applied an economic condition factor (ECF) of 94% to the subject property. There is no support to adjust the ECF further.

*Albright v. State of Montana*, 281 Mont. 196 (1997), For both residential and commercial property for which the cost approach to property valuation is applied, the Department adjusts property values based on an "Economic Condition Factor." An "Economic Condition Factor" (ECF) is defined by the Department's CAMAS users' manual as "extraordinary economic obsolescence that impacts all property located in a specific neighborhood, community, or geographic area." According to the CAMAS manual, "[t]he Economic Condition Factor attempts to correct for the difference between replacement cost less normal depreciation and market value as they may differ from locality to locality."

The purpose of the ECF is to adjust the cost approach to valuation to take local market influences, such as a depressed or very active market area, into account. For example, if a new residence is constructed in an economically depressed area, the cost of the new

construction may well exceed the selling price of the residence. According to the Department, to value this new residence with a strict unadjusted cost approach would create a significant disparity from appraisals based solely on the market data approach and frustrate the goal of equalization.

The Department of Revenue applies ECFs to adjust both residential and commercial property valuation where the cost approach is used. An ECF is calculated for residential property by comparing an estimation of values using the market approach to an estimation of values using the cost approach. The ratio determined by dividing the average market value by the average cost value is the ECF. An ECF is calculated for commercial property by comparing an estimation of the average sales price to an estimation of the average cost value. The ratio determined by dividing the average sales price by the average cost value is the ECF. ECFs apply only to the depreciated reproduction or replacement cost of the improvements to the land, and not to the value of the land itself. ECFs are not used for those residential properties whose value is determined by the market value approach or for those commercial properties whose value is determined by the income approach. In addition, ECFs are never applied to industrial property valuation.

Neither party provided valid sales of comparable property to offer an indication of market value.

The DOR did not provide a value indication for the subject from an income approach to value. The DOR stated that when income data was requested from property owners within the county, the responses were insufficient to develop an income model. The taxpayer was unsure if a DOR request for income and expense data had ever been received by him.

*Albright v. State of Montana, 281 Mont. 196 (1997)*, 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. The Department's process for income valuation of commercial

property begins with the submission of income and expense questionnaires to commercial property owners to complete and return. The information on the statements is reviewed by an appraiser and entered into the CAMAS system. Once in the computer, it can be sorted and analyzed using selectability criteria. The information is then correlated and commercial income models are developed. Such models may only be created, however, in areas where sufficient income and expense data has been collected. Because commercial property owners are not required to provide such information to the Department, the income approach to commercial property valuation in Montana is limited to those six counties in Montana in which ample data exists. In all other counties in Montana, commercial property is valued using the cost approach to valuation. Although the Department's appraisal plan provides that commercial property may also be estimated by the market data approach, the Department has not developed any market models for commercial property in Montana. Therefore, the CAMAS system estimates commercial property values based on either the income approach in six Montana counties or the cost approach in the remaining counties. The evaluation approach for commercial property and its estimated market value, as established by that method, are set forth on a "Property Record Card," which is available for review by the commercial property owner.

The property record card, exhibit B, illustrates the subject property's use code as hotel, which is designated by the number 12. Based on the property record card, the photos of the subject property, exhibits C, D & E, along with the testimony of both parties, the physical characteristics of three of the subject structures more accurately represent that of a motel. The use code designation for a motel from the 1997 Montana Appraisal Manual, page 34-13, is designated by the number 13. The three story structure should remain designated use code 12 - hotel and the balance of the structures

containing rooms should be designated use code 13 - motel. Page three of the property record card within the General Building Data illustrates the structure is comprised of 8 units. From the testimony, the structure is comprised of 4 units.

The taxpayer's original assessment notice and the revised assessment notice illustrate the following:

	1997 Original Notice	1997 Revised Notice
1997 Reappraisal		
Land	\$ 54,180	\$ 54,180
Imps.	<u>\$436,200</u>	<u>\$232,500</u>
<b>Total</b>	<b>\$490,380</b>	<b>\$286,680</b>
1996 Value		
Land	\$ 33,540	\$ 33,540
Imps.	<u>\$353,100</u>	<u>\$353,100</u>
Total	\$386,640	\$386,640
Phase-in Value		
Land	\$ 33,952	\$ 33,952
Imps.	<u>\$354,762</u>	<u>\$350,688</u>
<b>Total</b>	<b>\$388,714</b>	<b>\$384,640</b>

The emphasis being placed on the above illustration is taxes are paid based on the phase-in values, thus creating winners and losers in the phase-in provisions of MCA, 15-7-111. The taxpayer would have been considered a winner if the market value for the real estate was actually \$490,380 and he was only required to pay taxes based on \$388,714 of value. Subsequently, the taxpayer is paying taxes on \$97,960 more in property value than exists.

The taxpayer competes in the market place with other

hotel/motel operators. To obtain what should be considered a suitable return on his investment, when his expenses are higher than the competition as a result of real estate taxes, he may be required to charge a higher room rate than a property whose phase-in value was in close proximity to the 1997 reappraised value. A potential buyer would also take into account the higher taxes when negotiating a purchase price or considering an entirely different property or investment opportunity. In this case, the determination of a capitalization rate is jeopardized by the fact that an effective tax rate component is a moving target and would be based on a controlled relationship of the assessed value to the true value as illustrated by the following:

$$\frac{\text{Estimated RE Taxes} / \text{1997 Phase-in Value} = \text{Effective Tax Rate}}{\$6,967 / \$384,640 = 1.81\%}$$

$$\frac{\text{Estimated RE Taxes} / \text{1997 Market Value} = \text{Effective Tax Rate}}{\$6,967 / \$286,680 = 2.43\%}$$

The effective tax rate is one component of the overall capitalization rate when determining market value for ad valorem tax purposes.

The Dictionary of Real Estate Appraisal, 3rd Edition, defines an effective tax rate as, "The ratio between the annual property tax on real estate and its market value."

The following illustration is a comparison of taxes paid under the phase-in provisions of 15-7-111 versus taxes

paid on the 1997 reappraised value. There are two assumptions being made which are illustrated on the table. The land and improvement values have been combined for simplicity.

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Reappraised Value	\$286,68 0
Value Before Reappraisal (VBR)	\$386,64 0
Change in Value	(\$99,96 0)

Value Phase-in Calculation	
Change in Value	(\$99,96 0)
Phase-in Percentage	2%
Amount Phased-in	(\$1,999 )



Value Before Reappraisal (VBR)	\$386,64 0
Amount Phased-in	(\$1,999 )
Phase-in Market Value	\$384,64 0

Estimated Taxes with Phase-In Provisions		Taxes without Phase-In Provisions		\$ Amount Differences
Phase-in Market Value	\$384,64 0	Market Value	\$286,68 0	\$97,960
Taxable Percentage	3.838%	Taxable Percentage - *	3.86%	
Taxable Value	\$14,763	Taxable Value	\$11,066	\$3,697
Estimated Mill levy - **	0.47192	Estimated Mill levy - **	0.47192	
	<b>\$6,966.</b>		<b>\$5,222.</b>	

<b>Estimated General Taxes</b>	<b>95</b>	<b>Estimated General Taxes</b>	<b>27</b>	<b>\$1,744.68</b>
Impact on State Mills with Phase-In		Impact on State Mills without Phase-In		
Phase-in Market Value	\$384,640	Market Value	\$286,680	\$97,960
Taxable Percentage	3.838%	Taxable Percentage - *	3.86%	
Taxable Value	\$14,763	Taxable Value	\$11,066	\$3,697
State Mills	101	State Mills	101	
<b>States Portion of the Taxes</b>	<b>\$1,491.06</b>	<b>States Portion of the Taxes</b>	<b>\$1,117.67</b>	<b>\$373.39</b>

Assumptions: \* Taxable percentage remains unchanged at the 1996 rate of 3.86%.

\*\* Estimated mill levy remains unchanged.

The situation created here is one that indicates an attempt at equity by the stated position that the phase-in of a percentage of value, whether up or down, has to be the same for each taxpayer. It is a situation that, while equitable in application of a method, disregards equalization of value for taxation purposes. This State does not have a constitutional or legislative history of asking its taxpayers to pay taxes on values that are not present. It has, in fact, adopted the premise that taxpayers are to pay property taxes on 100% of market value. One of the primary functions of the appeal system is to make decisions on valuation questions relating to assessment, and the guiding principles have always centered on achieving 100% of market value. For 1997 and 49 more years (based on 2% change/year to achieve 100% of market value), the phase-in system of assessment creates winners: those who will pay on a controlled indication of value that is significantly less than 100% of value; and losers: those who will now pay on something over 100% of value. Higher value properties in 1997, or those of increasing value, are being under-assessed even though they may be appraised correctly. Conversely, lower value properties in 1997, or those of decreasing value, are being over-assessed even though they may be appraised

correctly. Property with increasing value has essentially been granted partial tax exemption at the expense of property with decreasing value.

The amount of assessment that is being made over and above the true value of the property is effectively no longer a tax since the property tax is "ad valorem". The DOR appraisal indicates the value is not there, and through the assessment the resultant collection of money becomes something other than a tax on value and is, in effect, a confiscation.

The DOR is charged with equalization of values by Montana statute, 15-9-101, MCA. There is nothing in the record to indicate that the DOR has not done so. The values may very well be equalized, but the market values as determined are not being utilized for assessment purposes. The market values merely are used to determine a basis for a "phase-in" that results in the tax burden being shared in an unequal fashion.

The DOR cannot be faulted for following a procedure determined for it by the Montana legislature. As an executive branch agency it has a duty to faithfully execute the law as established by the legislature. "It is also a rule of statutory construction that the legislature acted with full

knowledge and information as to the subject matter and existing conditions including the construction placed on previous law by executive officers acting under it." Helena Valley Irrigation Dist v.St. Hwy. Comm'n, 150 Mont. 192, 433 P 2d 791. The DOR is not at liberty to add something they might believe was omitted by the legislature, nor omit something that is written in the statute. In Potter v DOR, PT-1997-62, the DOR presented a letter written by the DOR Director and is an explanation to a legislator of how the DOR is administering a law that became effective over ten months before the letter was dated. That letter is not in itself indicative of legislative intent. We agree that the legislature intended the method of phase-in of value to be applied to properties of decreasing value as well as to properties experiencing an increase in value.

1-2-102, MCA, instructs: In the construction of a statute, the intention of the legislature is to be pursued if possible. When a general and particular provision are inconsistent, the latter is paramount to the former, so a particular intent will control a general one that is inconsistent with it.

15-1-101(1)(b), MCA defines assessed value as "the property value as defined in 15-8-111." 15-8-111(4), MCA, states, "For purposes of taxation, assessed value is the same as appraised value." (emphasis supplied) It is clear in this

case that the appraised value for 1997 and the value upon which the taxes are being assessed are two different figures. We are forced to stray from the equation of appraised value and assessed value being the same. This creates an inconsistency between 15-8-111(4), MCA, and 15-7-111(1), MCA, that must be controlled by the particular provision of 15-8-111(4), MCA, for purposes of taxation, assessed value is the same as appraised value.

The decisions of the local tax appeal boards, this Board, and the Courts on judicial review, have heretofore been determinative of value as they relate to taxation. The provisions of a "phase in" as demonstrated here negate even the application of a reduction in value if found by any reviewing authority because, under those provisions, the change would be "phased-in" from the value before reappraisal. For the appellant who questions the market value of his property under 15-7-102, MCA, 15-15-102, MCA, 15-2-301, MCA, or 15-2-303, MCA, even if a significant reduction in value was granted, there would be only the benefit of 2% of the difference between the reviewing authority decision and the value before reappraisal. Not only has the equalization of assessment been disturbed but so has the impact of review that is contemplated

by the Montana Constitution and the Montana Code Annotated. The right of review remains, but the result is minimal if, in fact, valuation changes are found necessary. "It is STAB's duty to determine the individual effect of the discriminatory method of appraisal before STAB can affirm, modify, or reverse the County Tax Appeal Board." Dept. of Revenue v. Countryside Village, 205 Mont. 51 (1983). The right of review remains, but the taxpayer also has a right to the remedy, and that right is lost by the action of 15-7-111(1),MCA.

The Montana Supreme Court held in State ex rel. Schoonover v. Stewart, 89 Mont. 257 (1931), that; It is required that there shall not be any unfair discrimination among the several counties, or between the different classes of taxable property in any county, or between individuals.(emphasis supplied)

The Montana legislature has supported the premise that is contemplated by the Montana State Constitution and the decisions of the Montana Courts by providing a policy in Title 15 of the Montana Code Annotated.

15-7-131. Policy. It is the policy of the state of Montana to provide equitable assessment of taxable property in the state and to provide for periodic revaluation of taxable property in a manner that is fair to all taxpayers.(emphasis supplied)

The matter of equalization of values for assessment and compliance with the constitutional mandate to "Appraise, assess and equalize the valuation of all property which is to be taxed in the manner provided by law" is, of course, a duty of government itself.

It is the opinion of this Board that there are four areas where the phase-in provisions of 15-7-111, MCA, create conflict of statute, or create situations that are squarely at odds with statute and the Montana Constitution. These issues are: equalization of values for taxation purposes, the principles of statutory construction, the confiscation of property, and the right of remedy.

The Board cannot formally rule with any jurisdiction on the constitutional issues raised by this appeal. The Montana Supreme Court, in Larson v. State and DOR, 166 Mont. 449 (1975), has retained that function for the courts.

This taxpayer has filed an appeal with this Board, appeared and presented testimony at hearing, and deserves a reasoned decision from this Board. We believe a court of competent jurisdiction may do what this Board cannot do and find the disparity in taxation created by the "phase-in"



provisions of 15-7-111 unconstitutional.

CONCLUSIONS OF LAW

1. Article VIII, Section 3, Constitution of the State of Montana. Property tax administration. The state shall appraise, assess, and equalize the valuation of all property which is to be taxed in the manner provided by law.

2. 15-7-131, MCA, Policy. It is the policy of the state of Montana to provide for equitable assessment of taxable property in the state and to provide for periodic revaluation of taxable property in a manner that is fair to all taxpayers.

3. 15-7-111, MCA. 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. The amount of the change in valuation from the 1996 base year for each property in classes three, four, and ten must be phased in each year at the rate of 2% of the total change in valuation.

4. 15-7-112, MCA. Equalization of valuations. The same method of appraisal and assessment shall be used in each

county of the state to the end that comparable property with similar true market values and subject to taxation in Montana shall have substantially equal taxable values at the end of each cyclical revaluation program hereinbefore provided.

5. 15-8-111(4), MCA. For purposes of taxation, assessed value is the same as appraised value.

6. 1-2-102, MCA. In the construction of a statute, the intention of the legislature is to be pursued if possible.

When a general and particular provision are inconsistent, the latter is paramount to the former, so a particular intent will control a general one that is inconsistent with it.

7. 42.20.501-503 Administrative Rules of Montana

8. *State ex rel. Schoonover v. Stewart*, 89 Mont. 257 (1931)

9. *Larson v. State and DOR*, 166 Mont. 449 (1975)

10. *Albright v. State of Montana*, 281 Mont. 196 (1997)

11. *Potter v. DOR*, PT-1997-62 (1998)

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ORDER

IT IS THEREFORE ORDERED by the State Tax Appeal Board of the State of Montana that this appeal be granted in part and denied in part. The subject land shall be valued at \$1.19 SF or \$42,983. The subject structures use code designation 12, hotel, shall be changed to the motel use code designation 13 for each structure with the exception of the three story structure, restaurant/bar and the warehouse/storage area and all shall be priced by the cost approach to value by means of CAMAS. The value indication shall be entered on the tax rolls of Glacier County by the assessor of that county for the 1997 tax year. The decision of the Glacier County Tax Appeal Board is therefore modified.

Dated this 12<sup>th</sup> day of May, 1998.

BY ORDER OF THE

STATE TAX APPEAL BOARD

( S E A L )

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PATRICK E. MCKELVEY, Chairman

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GREGORY A. THORNQUIST, Member

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LINDA L. VAUGHEY, 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.