

BEFORE THE STATE TAX APPEAL BOARD
OF THE STATE OF MONTANA

THE DEPARTMENT OF REVENUE)	
OF THE STATE OF MONTANA,)	DOCKET NO: PT-1997-165
)	
Appellant,)	
)	
-vs-)	
)	FINDINGS OF FACT,
HELENA PARTNERS LIMITED)	CONCLUSIONS OF LAW,
PARTNERSHIP,)	ORDER and OPPORTUNITY
)	<u>FOR JUDICIAL REVIEW</u>
Respondent.)	

The above-entitled appeal was heard on May 23, 2000, in the City of Helena, 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.

Tax Counsel Brenda Gilmer represented the Department of Revenue (DOR). Appraiser Don Blatt presented testimony in support of the appeal. The taxpayer, represented by Don E. McBurney, Agent, Collins Management Company, presented testimony in opposition thereto. Testimony was presented, exhibits were received, and a schedule for post-hearing submissions was established. The Board took the appeal under advisement; and the Board having fully considered the testimony, exhibits, post-hearing submissions, and all things and matters presented to it by all

parties, finds and concludes as follows:

FACTUAL BACKGROUND

1. Due, proper and sufficient notice was given of this matter, the hearing, and of the time and place of the hearing. All parties were afforded opportunity to present evidence, oral and documentary.
2. The property which is the subject of this appeal is described as follows:

Northern Pacific Addition #2, Block 100, Lots 1-16; geo code #1888-29-4-39-01-0000, assessor code #40017; Northern Pacific Addition #2, Block 99, Lots 1-8, geo code #1888-29-4-35-15-0000, assessor code #2842; Northern Pacific Addition #2, Block 99, Lots 9-16, geo code #1888-29-4-35-01-0000, assessor code #2841; City of Helena, Lewis & Clark County, State of Montana and improvements located thereon.
3. For the 1997 tax year, the DOR appraised the subject property at a value of \$404,400 for the land and \$2,734,900 for the improvements.
4. The taxpayer timely filed an AB-26 Property Adjustment Form with the DOR on October 1, 1997, requesting a formal meeting with the DOR to discuss the taxpayer's opinion of an over valuation of the property.
5. On February 9, 1998, DOR appraiser Don Blatt denied an adjustment of the market value on geo codes #1888-29-4-35-01-0000 and #1888-29-4-35-15-0000, stating:

After review, I felt appraisal was a fair market value.

6. On February 9, 1998, DOR Appraiser Don Blatt approved an adjustment to geo code #1888-29-4-39-01-0000, stating:

*After review, I adjusted appraisal to a fair market value,
96 value from \$1,184,400 to \$1,184,400;
97 value from \$1,713,900 to \$1,693,500;
Phase-in from \$1,194,990 to \$1,194,582.*

7. The taxpayer appealed to the Lewis and Clark County Tax Appeal Board on March 11, 1998 requesting a value "To be determined" and stating no reasons for the appeal.

8. In its June 5, 1998 decision, the county board approved the taxpayer's request for a reduction in appraised value, entering the amount of \$1,204,142 under the "Personal Property" section of the "Appraised Value as Determined by Taxpayer" section of the appeal form, rather than in the section entitled "Appraised Value set by County Board Decision," stating:

Dept. of Revenue offered no testimony as to the application of their income or cost approach to subsidized housing.

9. The DOR appealed that decision to this Board on July 2, 1998, stating:

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

10. The DOR's final determination of market value of \$3,138,900

was established from the cost approach to value.

11. The Board's decision has also considered the evidence and testimony presented in PT-1997-164, DOR v. Joseph B. Reber & Sons Partnership and PT-1997-166, DOR v. Almanor Investors Limited Partnership.

DOR'S CONTENTIONS

Department of Revenue's Exhibit A is a copy of the site map for the subject area, delineating lot and block, and color-coded as pink, blue or yellow to differentiate the three separate parcels of land with individual geocodes that comprise the subject property. Exhibits B-1, B-2 and B-3 are the computer-generated property record cards for the subject property, color-coded in the same manner as Exhibit A. The corresponding values for exhibits B-1, B-2 and B-3 are as follows:

Exhibit #	Assessor #	Land Value	Improvement Value	# of Units
B1	40017	\$196,800	\$1,496,700	48
B2	2842	\$103,800	\$ 647,700	25
B3	2841	\$103,800	\$ 590,100	20
Total		\$404,400	\$2,734,500	93

Exhibits C-1, C-2 and C-3 are the AB-26 forms filed on each separate piece of the subject property, requesting a review of each parcel. Exhibit C-1 indicates that an adjustment was made to the parcel identified by assessor code number 40017. Mr. Blatt testified, *"the original assessment on that one property was an income approach value. When I reviewed it with Dale Fasching, there*

was a correction to the bedroom count on this property. When I took a thorough look at the income approach through this AB-26 process, I ran into some more anomalies, and I defaulted to cost on this one, and I had already defaulted to cost on these other two prior to the mailing of assessments." Exhibit D is the data collection card for this parcel, indicating that corrections were made to the number of bedrooms. Exhibit E is a copy of the county tax appeal filed by Dale Fasching of Tamarack Property Management on the three properties included in the apartment complex.

Ms. Gilmer testified that she had planned to present as DOR's Exhibit F, a copy of "Procedure for Federally Subsidized Housing", summarized in pertinent part as follows:

Purpose: To explain the procedure for the valuation of federally subsidized housing

Procedure: Introduction:
According to 15-1-101(e) and 15-6-134(3), MCA, federally subsidized housing properties are similar and comparable to other apartment housing. However, you do need to take into consideration the benefits generated through the federal subsidies.

This procedure will also serve as a basis for appeals when necessary. All three approaches to value should be considered.

Administrative notice was taken of this information, which had been presented as a Department of Revenue exhibit in the previous appeal, *Department of Revenue vs. Almanor Investors Limited Partnership*, PT-1997-166. In the previous hearing, Ms. Gilmer had testified that the procedure described was taken from a DOR

procedures manual compiled in 1993; and Mr. Blatt had stated that the procedure is *"an attempt to address some of the concerns about any effects the subsidy may or may not have on the property, depending on what type of subsidy it is."*

Exhibit G is a copy of the Department of Revenue's appeal to the State Tax Appeal Board, dated July 2, 1998. Exhibits H and I are copies of the fee appraisals required by HUD when a property is nearing the end of its HUD contract term. Exhibit H is the appraisal for two of the tax i.d. numbers, labeled as FHA project #093-55002 (color coded as pink and blue). This parcel consists of the 73 units built in 1969 that are referred to as the Helena Manor Apartments. Exhibit I is the appraisal of the remainder parcel, labeled as FHA project #093-44034 (color coded as yellow). This parcel consists of 20 units built in 1970 and is referred to as the Helena Manor Addition. Both appraisals were prepared by Kenneth A. Dayton, MAI, of the firm of Kramer, Geisler, Strand & Dayton, Inc. Mr. Dayton's cover letter, attached to both Exhibits H and I, reads in pertinent part:

Estimates of Almanor's extension and transfer preservation values have been completed for the above referenced real estate, per the appraisal guidelines of Title VI. The purpose of this appraisal is to meet the appraisal requirements for the owner's filing under the Low Income Housing Preservation and Residential Homeownership Act (LIHPRHA) of 1990. An extension preservation value is the "as is" market value of the subject real estate that assumes it is to be converted to market rate (non-subsidized) rental housing. The transfer preservation value is an "as is" value that assumes the subject real estate is converted to its highest and best use. Herein, I will show that the highest and best use of the subject real estate is as a market rate rental housing project. Therefore, in this case, the extension preservation value equals the transfer preservation value.

In arriving at a preservation value, Title VI appraisal guidelines condition the market

value in that the valuation is to reflect HUD's estimate of required repairs and their estimated cost for such repairs.

The Title VI appraisal guidelines encourage appraisers to use in their valuation a 7% vacancy and credit loss allowance and to also limit expenses to either the average of the subject's past three years or the last 12 months, whichever is more representative of the subject property. However, the guidelines indicate that a divergence from these regulations can occur, as done herein, if the divergence is supported with appropriate market evidence.

In Exhibit H, the fee appraisal for FHA project #093-55002 (color coded pink and blue), Mr. Dayton's cover letter states: "*Presented below is my estimate of the subject's extension preservation value with the effective date of opinion being 2/9/95: **\$2,422,958**, composed of land value - \$310,000, and improvement value - \$2,112,958.*" In Exhibit I, the fee appraisal for FHA project #093-44034 (color coded yellow), Mr. Dayton's cover letter states: "*Presented below is my estimate of the subject's extension preservation value with the effective date of opinion being 4/28/95: **\$692,245**, composed of land value - \$100,000, and improvement value - \$592,245.*" The total preservation value for the three parcels of property according to Mr. Dayton's estimates is **\$3,115,203**, composed of total land value - \$410,000, and total improvement value - \$2,705,203.

Ms. Gilmer requested that the board take administrative notice of the DOR's Exhibit J, which had been submitted in the previous appeal, *Department of Revenue vs. Almanor Investors Limited Partnership, MT-1997-166*. Mr. Blatt testified that this document consists of "*observations returned regarding income and expense.*"

This exhibit, which is entitled "Apartment Analysis," is a compilation of 49 income and expense surveys returned to the DOR by individual property owners with income properties located in various Helena neighborhoods. Of the 49 surveys, seven of the properties were involved in a sales transaction. Based on the sales illustrated on Exhibit J, a total capitalization rate of 9.1% had been determined.

Mr. Blatt had previously testified that the department uses these questionnaires when developing an income approach model and he testified that *"Exhibit J was specifically used to come up with the income approach for multiple neighborhoods in Helena. An income approach was developed for this property but not used."* He stated that in researching these sales, the per unit value based on the sales is **\$43,367**.

Exhibits K-1 (color coded pink), K-2 (color coded blue) and K-3 (color coded yellow) are computer screen printouts of the income approach that was developed for the three parcels comprising the subject property. Summarized the exhibits illustrate the following:

Exhibit	Market Value
K1	\$2,131,500
K2	\$ 776,200
K3	\$ 757,800
Total	\$3,665,500

The exhibits detail the income values generated based on the model for the properties and indicates the derivation of the

capitalization rate of 9.1% that is shown in Exhibit J.

The Department of Revenue's post-hearing submissions are copies of the property tax and personal property tax bills for the subject properties, and the City of Helena's definitions of zoning designated as "R-2" (single-family residential), "R-3" (medium density residential) and "T" (transitional) and the requirements and permitted uses in these zones.

Mr. Blatt testified that although he had considered the sales and income approaches to valuing the subject property, he ultimately used the cost indicator of value because of the anomalies he had encountered that he felt made the income methodology not as sound as cost. He stated that the income approach *"required more research, and the cost approach indicated a fair value, in my opinion."* He was able to obtain actual income and expense information on the subject properties from Tamarack Property Management, but *"the nuts and bolts of how the HUD contract worked, or even what the HUD contract was on their particular property, was the stumbling block."*

TAXPAYER'S CONTENTIONS

The Board took Administrative notice of Mr. McBurney's testimony from the previous appeal, *Department of Revenue vs. Almanor Investors Limited Partnership, MT-1997-166*. In pertinent part, this testimony follows.

Mr. McBurney had testified that when the owners of the subject property replaced their previous management company with Collins Management, "*hard feelings and jealousy*" resulted in records not being transferred, so he had little information on the property and the value as approved by the county tax appeal board; and he had hoped that his questions would be answered at today's hearing. He requested no specific value and presented no exhibits.

Mr. McBurney explained the history of various Department of Housing and Urban Development (HUD) subsidized housing programs. The 235 program for single-family units was started after World War Two to help veterans obtain housing, and was later expanded to low-income people. Its "sister program," 236, was developed to provide multi-family housing. In the late 1960's and early 1970's, the 221-d-3 and 221-d-4 programs were active, and many multi-family complexes were constructed before those programs were phased out.

Mr. McBurney explained that the purpose of these HUD programs was to provide low-income housing, not to provide profit to developers. However, several incentives were available to encourage participation in the programs, including depreciation, mortgage rates and terms, and construction itself. The IRS codes provide for an allowance for depreciation, which reduces taxable income. Although "*a profit from income-producing properties is generally desirable, passive losses from unprofitable properties at that point in time could be used to help reduce overall profits and tax*

liabilities. Those losses could also accrue and be carried forward into future years." Mr. McBurney explained the mortgage incentive by stating that "HUD guarantees financing through FHA insurance and buys the rate for these program properties down to one percent. However, that's a benefit to the tenants and not to the owners, because the actual mortgage is at market rates at the time of construction of the property. So, typically we find mortgages of seven to eight percent. The term of the mortgage is 40 years, very long term...which can be viewed as positive because the mortgage term is so long that monthly payments are low, but negative because pre-payment, or opting out of the program...during the first 20 years of the mortgage is not allowed. By the time the mortgage is fully matured, remaining economic life of the improvements is likely to be minimal. The original philosophy was that existing projects would go off line after that initial 20-year period as owners opted out of the government programs, but that the housing inventory would be replaced by new projects coming on line because of continuing ongoing program incentives."

Often the original program participants would form construction companies to act as the general contractor during the building of apartment complexes. After a sufficient number of complexes had been built, they would liquidate the construction companies and form management companies to manage the complexes,

thus guaranteeing management income during the ensuing years. "People could act as a general partner and syndicate by finding limited partners who would supply equity cash to the projects, and then sell the projects and their program benefits after 12 or 16 years. The bulk of the depreciation allowance would have been captured after that time frame, the sale agreement would reserve management rights to the seller, and expectation would be held out to the buyer that he could opt out from under HUD control in four to eight years, in other words, at the end of that 20-year time limitation; and then he could potentially convert the project to a market-based apartment complex." However, this changed in 1986 with changes to the federal tax laws, including eradication of depreciation, lengthening of economic life tables, decrease in the annual depreciation allowances and elimination of passive losses "to anyone not actively engaged in building and/or management programs."

In 1987, Congress also enacted significant legislation, called Title II, that imposed a moratorium on projects being able to opt out of HUD programs after the initial 20-year time period. The moratorium was in effect for five years, until it was lifted in 1992 by legislation known as Title VI and referred to as the Preservation Program. Mr. McBurney explained that the Preservation Program was the reason for the existence of the fee appraisal on

the subject property (DOR Exhibits H and I). The legislation required that the owner of a property would hire an independent fee appraiser to come up with a report and final value conclusion, and HUD would also hire a fee appraiser to go through the same exercise. *"So you had two reports. If the final value conclusions agreed with each other within five percent, there was no third appraiser. On the other hand, if the two value conclusions varied more than five percent, one of two things had to occur. Either the two appraisers would talk to each other and through some sort of mutual adjustment...they would amend their values so that they would then be within plus or minus five percent of each other; or a third appraiser would be hired. If a third appraiser was hired, he would be provided with the first two appraisal reports. He would do his own research, and he would also have full access to the first two reports. His report would be a final binding authority. These reports were to come up with a preservation value estimate, and that was anticipated to be...relatively speaking, a high number. That number would be compared with a, relatively speaking, low number that would be either a book value that was carried for the project, or a value estimate that came into being via actual profit and loss statements. The difference between the high and the low number would be a sum of money, then, that would be paid to the property owner as an incentive for him to preserve the project in*

the government program, hence the name 'preservation'." In the previous appeal, both fee appraisals were presented as Department of Revenue exhibits; however, in the current appeal, only the Kenneth Dayton appraisal was submitted (Exhibits H and I).

Mr. McBurney had explained that the appraisers were required to follow the HUD guidelines and directives, which included "*that the appraiser treat the subject property as if it were not encumbered by this government program, as if it were entirely a market-based apartment complex.*" Although Mr. McBurney had stated that the directive he described was not included in the fee appraisals on the subject property, he was "*confident that these appraisers had to comply with these requirements. Because of that, these appraisals are not applicable to the problem before us... because the mandate was in existence to treat the project as if it were unencumbered, as if there were no requirements to limit clientele to low income, as if it were entirely market based and could do whatever it wanted to. That was not, in reality, the case.*" Mr. McBurney believes that the subject property should be valued as encumbered because of the restrictions that are imposed upon it.

Mr. McBurney had explained that the subject property in the previous appeal is a limited dividend project (as is the subject property in this appeal). In these projects, the original developer

or contractor could build the project for ten percent of total projected costs but was limited in the annual dividend he could collect to six percent of the original equity investment. *"In other words, if a project was projected to cost \$1,000,000...you could do that for ten percent, or \$100,000 equity infusion. Then the most that you could pull out of that project in any one year was \$6,000, six percent of the original equity investment."*

Mr. McBurney testified that *"I think the only new information that I would add is that this is a 236 BMIR (below market interest rate) program type, still a limited dividend, so very much in common with the previous appeal. From the owners' and manager's point of view, the pink and the blue were constructed as one complex, one project, in 1970. The yellow is under another HUD project number even though it's still effectively now a part of a single complex. It was constructed two years later, and it's commonly known as Helena Manor Addition. That's the only difference. They could easily be combined now except for HUD's project numbers."* Mr. McBurney believed that the properties could be combined into one parcel since they are contiguous despite their separation by a street. He clarified his testimony about the project being under the HUD 236 BMIR program at the time the appeal was filed, by stating that although the bulk of the project is 236 BMIR, within the project there are 20 scattered units that are

under the 221-d HUD program.

Mr. McBurney stated that *"I might offer a little additional testimony as well concerning the preservation program. I would reemphasize that in my opinion the fee appraisals that were submitted are not relevant to this appeal because they were done to a preservation standard under preservation guidelines, and that is outside the scope of what the Department of Revenue is charged with. But, I believe that if Department of Revenue personnel followed the methodology that I believe they could now accomplish on their Exhibit F, that they would in fact come up with a value estimate that much more closely approximates the number that's written on the appeal form in opposition to the number that they are now presenting to us..."* Mr. McBurney testified that in September, 1998, Helena Partners opted out of the HUD program and the apartment complex became a market rent project.

Mr. McBurney concluded his presentation by stating that *"I do not believe the department's evidence is credible. I don't believe it's strong enough to overcome the previous ruling. The department's evidence is based on an a priori assumption that the subject is not encumbered with a government program, and that's a false assumption. Reality is that the property is encumbered with a government program."*

BOARD'S DISCUSSION

There have been three appraisals presented as evidence before the Board. The subject property is operated as a single multifamily project but required two separate fee appraisals based on the HUD project numbers. The following table illustrates the date of value along with the various value conclusions:

Appraiser	DOR	Dayton (exhibit H)	Dayton (exhibit I)	Dayton (exhibits H & I)
Date of Value	1/1/96	2/9/95	8/25/94	
Land Value	\$404,400	\$310,000	\$100,000	\$410,000
Market Value – Cost Approach	\$3,138,900	\$2,610,000	\$700,000	\$3,310,000
Market Value – Income Approach	\$3,665,500	\$2,440,000	\$710,000	\$3,150,000
Market Value – Sales Comparison Approach	\$4,033,131 (1)	\$2,600,000	\$720,000	\$3,320,000
Final Determination	\$3,138,900	\$2,422,958 (preservation value)	\$692,245 (preservation value)	\$3,115,203 (preservation value)

(1) DOR sales comparison was calculated at \$43,367 per apartment unit. (93 X \$43,367) Exhibit J & Blatt testimony)

It is highly unlikely that different appraisers would arrive at the same value, especially when considering different market data and appraisal dates.

The DOR presented into evidence the two fee appraisals that offer support for their final value conclusion. The DOR must present credible evidence to show support for their value conclusion. The Lewis and Clark County Tax Appeal Board granted the taxpayer's appeal and the DOR appealed that decision to this Board. The DOR is the appellant in this appeal and carries the burden of proof. Steer Inc. v. Department of Revenue, 245 Mont. 470, 1990.

The DOR has relied on the cost approach to value for the subject property. Albright v. Montana Department of Revenue, 281 Mont. 169, 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." (Emphasis supplied.)

Mr. Blatt testified that, in developing the income model, the DOR mailed property owners a survey requesting income and expense information. Based on the replies that were returned to the DOR, exhibit J was created, and that information was also used to create the income model (exhibits K1, K2 & K3) for the subject.

Exhibit J contains income and expense data from forty-nine rental properties. Of the forty-nine properties, nineteen are duplexes, five are triplexes, and twenty-one are fourplexes.

ARM 42-20-104 COMPARABLE PROPERTY (3) Within the definition of comparable property in (1), the following types of property are considered comparable:

(b) Duplexes are comparable only to other duplexes; triplexes are comparable only to other triplexes; fourplexes are comparable only to other fourplexes. (Emphasis added.)

The Board's analysis of the DOR's income approach will exclude those properties that are not deemed comparable based on the DOR's own administrative rules.

The following table summarizes the information from exhibit J, the subject property, and the fee appraisal,:

Data	Survey – Exhibit J	Subject – Exhibit K1, K2 & K3	Dayton – Exhibit H
# of rental units	NA	93	93
Monthly rent – 1 bedroom	\$240 - \$475 (average - \$358)	\$295	\$410
Monthly rent – 2 bedroom	\$240 - \$475 (average - \$358)	\$410	\$490
Monthly rent – 3 bedroom	\$500 - \$550 (average - \$525)	\$555	\$565
Vacancy/collection loss %	9% – 15%	9%	5%
Management (% of Effective Gross Income – EGI)	None reported	None applied	4%
Total expenses (% of EGI; includes management expense)	19% -59%	24%	46%
Net Operating Income (NOI) (% of EGI)	81% - 39%	76%	54%
Capitalization Rate	NA	9.1%	9.5%

It is the Board's opinion that the DOR's income model has been developed recognizing property not deemed comparable pursuant to ARM 42-20-104 COMPARABLE PROPERTY. The CAMAS income model created to produce a market value indication is only as good as the information that has been used to create that model. It is the Board's opinion that the income model developed to estimate the market value for the subject property has not accurately accomplished that assignment.

The definition of market value in the Dayton appraisal does not differ dramatically from the definition used by the DOR, §15-8-111 MCA. Each appraiser has considered different market data, which would result in varying market value indications.

When valuing a property based on the cost approach to value, the personal property items normally associated with an apartment complex, i.e., refrigerator, stove, washers and dryers, are class

eight property, pursuant to MCA §15-6-138. Class eight property is subject to different depreciation tables and a different tax rate. While the personal property is not under appeal, the potential to collect rental income without these personal property items in place is highly unlikely. There is nothing in the record to suggest that the DOR adjusted the value indication from the income approach to reflect the presence of the personal property. The DOR's post hearing submission, the 1997 tax statement, indicates that the market value of the personal property of \$87,562. The Board does not have sufficient evidence to rely on an appropriate adjustment to the market value from the income approach.

The Board questioned the DOR with respect to the "Procedure For Federally Subsidized Housing", as to the applicability and relevance. An affidavit signed by Randy Wilke, Process Lead for the Compliance, Valuation and Resolution Division of the DOR, and submitted to the Board subsequent to the hearing and made part of the record, states the following:

I have personal knowledge that the attached procedure (Procedure No. 2201-Valuation of Federally Subsidized Housing) was developed and approved by the management of the Property Assessment Division in 1997.

This procedure was inadvertently not dated when it was approved but has been the procedure and practice of this agency since 1997.

MCA, §15-7-111. *Periodic revaluation of certain taxable property.(1) The department of revenue shall administer and supervise a program for the revaluation of all taxable property*

within classes three, four and ten. All other property must be revalued annually. The revaluation of class three, four, and ten property is complete on December 31, 1996. (Emphasis added.)

Pursuant to Montana Code Annotated (MCA), the appraisal for the subject was completed prior to the policy being implemented. When asked if the procedure for valuing subsidized housing was in place as of January 1, 1997, Mr. Blatt stated "It is my understanding they came about in response to and after the appraisal date." (PT-1997-164, DOR v. Joseph B. Reber & Sons Partnership). It is apparent to the Board that the DOR's policy was created to assist the DOR in appraising multifamily properties that are subject to a government program. There is no indication that the DOR considered this policy in any way when appraising the subject property. There is nothing in the record to indicate that these questionnaires completed and returned by commercial property owners were involved with a HUD program. An income approach for a property located in Missoula County was included with the Wilke affidavit and varied significantly from the income approach for the subject:

Property	Subject	Missoula (affidavit)
Income	\$481,380	\$332,064
Financing benefit	\$0	\$46,504
Retail / Laundry & vending income	\$0	\$4,787
Percent occupancy	91%	100%
Income after occupancy	\$438,056	\$383,355
Effective gross income	\$438,056	\$383,355
Expenses	\$104,498	\$128,604
Management	\$0	\$26,835 (7% of EGI)
Total expenses	\$104,498	\$155,438

Property	Subject	Missoula (affidavit)
Net income	\$333,558	\$227,917
Income Capitalization		
Equity ratio	.91	.09
Effective tax rate	0	.0215
Total capitalization	.91	.1115
Value, income approach	\$333,558/.91 = \$3,665,473	\$227,917/.1115 = \$2,044,100

As noted above, management is not a recognized expense by the DOR. IAAO (International Association of Assessing Officers), page 216, *"Management is a proper expense for every income producing property regardless of whether it is owner or tenant occupied and whether an actual management fee is paid or not. Management is usually stated as a percentage of effective gross income and varies depending on the geographic area and property type..."*

The Appraisal Standards Board (ASB) issued an Advisory Opinion, AO-14, *Appraisals For Subsidized Housing*, that was approved for general distribution on July 19, 1995. (Uniform Standards of Professional Appraisal Practice, USPAP, 1998) In pertinent part, AO-14 states the following:

...Subsidized housing may be defined as single- or multi-family residential real estate targeted for ownership or occupancy by low- or moderate-income households as a result of public programs and other financial tools that assist or subsidize the developer, purchaser or tenant in exchange for restrictions on use and occupancy...

...An appraiser should be capable of analyzing the impact of the programs and definitions in the local subsidized housing submarket, as well as the general market that is unaffected by subsidized housing programs...

...Subsidies and incentives should be explained in the appraisal report and their impact on value, if any, needs to be reported in conformity with the Comment section of Standards Rule 1-2(e), which states, **"Separate valuation of such items is required when they are significant to the overall value."**

Appraisers should be aware that appraisal of subsidized housing usually requires more than one value analysis predicated on different scenarios. In appraisal of subsidized housing, value conclusions that include the intangibles arising from programs will also have to be analyzed under a scenario without the intangibles in order to measure their influence on value and report the results without misleading the intended user.

The fee appraiser stated in his reports that the subject property is subject to a HUD subsidized program. There is nothing in the record to suggest that opinion AO-14 was considered. Nor was it suggested that this opinion was part of the appraisers' assignment.

The Dayton appraisals, state in pertinent part from the letter of transmittal:

"...Estimates of Helena Manor's and Helena Manor Addition's extension and transfer preservation values have been completed for the above referenced real estate, per the appraisal guidelines of Title VI. The purpose of this appraisal is to meet the appraisal requirements for the owner's filing under the Low Income Housing Preservation and Residential Homeownership Act (LIHPRHA) of 1990. An extension preservation value is the "as is" market value of the subject real estate that assumes it is to be converted to market rate (non-subsidized) rental housing. The transfer preservation value is an "as is" value that assumes the subject real estate is converted to its highest and best use. Herein, I will show that the highest and best use of the subject real estate is as a market rate rental housing project. Therefore, in this case, the extension preservation value equals the transfer preservation value.

In arriving at a preservation value, Title VI appraisal guidelines condition the market value in that the valuation is to reflect HUD's estimate of required repairs and their estimated cost for such repairs."

The Board has taken administrative notice of all testimony and exhibits in PT-1997-166, DOR v. Almanor Investors Limited Partnership.

42.20.107 Valuation Methods For Commercial Properties

(1) When determining the market value of commercial properties, other than industrial properties, department appraisers will consider, if necessary information is available, an income approach valuation. (emphasis added)

(2) If the department is not able to develop an income model with a valid capitalization rate based on stratified direct market analysis method, the band-of-investment method or collect sound income and expense data, the final value chosen for ad valorem tax purposes will be based on the cost approach or, if appropriate, the market approach to value. The final valuation is that which most accurately estimates market value. (emphasis added)

42.20.108 Income Approach

(2) The following procedures apply when valuing commercial property using the income approach:

(b) Market rent is the rent that is justified for the property based on an analysis of comparable rental properties and upon past, present, and projected future rent of the subject property. It is not necessarily contract rent which is the rent actually paid by a tenant.

(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. The following is an example of the format which will be used:

(a)		potential gross rent
	less	vacancy and collection loss
	plus	miscellaneous income
	equals	effective gross income
	less	normal operating expenses
	equals	normal net operating income

(b) Normal and allowable expenses include the costs of property insurance, heat, water, and other utilities; normal repairs and maintenance; reserves for replacement of items whose economic life will expire before that of the structure itself; management and other miscellaneous items necessary to operate and maintain the property.

42.20.109 Capitalization Rates

(1) When using the income approach, the department will develop overall capitalization rates which may be according to use type, location, and age of improvements. Rates will be determined by dividing the net operating income of each property in the group by its corresponding valid sale price. The overall rate chosen for each group is the median of the rates in that group. The final overall rate must include an effective tax rate.

(2)(a) If there are insufficient sales to implement the provisions of ARM 42.20.109 (1), the department will consider using a yield capitalization rate. The rate shall include a return of investment (recapture), a return on investment (discount), and an effective tax rate. The discount is developed by using a band-of-investment method for types of commercial property. The band-of-investment method considers the interest rate that financial institutions lend on mortgages and the expected rate of return an average investor expects to receive on their equity. This method considers the actual mortgage rates and terms prevailing for individual types of property.

The DOR has relied on the cost approach to value for the subject property, Albright v. Montana Department of Revenue, 281

Mont. 169, 1997 states, "For the valuation of commercial property, CAMAS produces a cost estimate and, in some instances, an income estimate. The income approach to valuation is the preferred method of valuation of commercial properties in Montana."(Emphasis added.)

It's the Board's opinion, in the course of the hearings, PT-1997-164 (Tower Hill Apartments), PT-1997-165 (Helena Manor Apartments) and PT-1997-166 (Almanor Apartments) there is sufficient evidence to determine appropriate market rents, potential gross income, vacancy and collection loss, operating expenses, net operating income and a total capitalization rate including an effective tax rate, to arrive at an indication of market value from the income approach. The following illustrates the market data gleaned from the evidence and testimony of the aforementioned appeals that will be considered in valuing the subject property:

<u>Income, Vacancy & Expense</u>	
One Bedroom Unit	\$375.00
Two Bedroom Unit	\$400.00
Three Bedroom Unit	\$450.00
Vacancy/Collection Loss	6%
Miscellaneous Income per Unit after vacancy	\$150.00
Operating Expenses (before real estates taxes)	46% of Effective Gross Income

<u>Capitalization Rate:</u>	
Market Capitalization Rate	9.10%
<u>Effective Tax Rate</u>	1.90%
Overall Capitalization Rate	11.0%

Based on the foregoing data, the subject property's market value is:

13 one bedroom units @ \$375.00	\$ 4,874
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56 two bedroom units @ \$400.00	\$ 22,400
24 three bedroom units @ \$450.00	\$ 10,800
Total monthly apartment income	\$ 38,075
12 months	X 12
Potential Gross (apartment) Income	\$456,900
Less: Vacancy/Collection Loss (6%)	\$ 27,414
Effective Gross (apartment) Income	\$429,486
Other Income	\$ 13,950
Effective Gross Income	\$443,436
Less: Expenses (46% of EGI)	\$203,981
Net Operating Income	\$239,455

NOI Capitalized @ 11.0%
 \$239,455/11.0%

\$2,176,868

The market value of the subject on a price per unit basis is \$23,407 (\$2,176,868/930). Age, condition, amenities, location and unit mix are a few of the characteristics that may suggest a higher or lower value per unit value. Taxpayer's exhibit #1 (PT-1997-166, DOR v. Almanor Investors Limited Partnership) before the local board illustrates the following sales price per unit along with the accompanying comments:

Location	Sale price per unit	Comments
Missoula	\$26,300	Highly desirable units, best of locations, walking distance to shopping centers, parks, swimming pools and restaurants. Each unit is equipped with range, refrigerator, air conditioner and is serviced by gas hot water heat. Each unit is accessed from both the ground floor and upper level by parking at each level. Landlord pays utilities.
Billings	\$20,833	36 multi-family units (9 four-plexes) with a total floor area of 27,624 sq. feet including 28 two bedroom, 4 one bedroom and 4 efficiency apartments.
Billings	\$31,250	80 unit apartment complex with a swimming pool and garages. These units have been well maintained with new roofs and exterior paint in 1992-93. Property was listed for \$2,650,000 at time of sale. Negotiation brought price to \$2,500,000. Financing did not affect sales price.
Billings	\$28,300	A 30 unit complex with 18 two bedroom units and 12 one bedroom units. Paved parking lot and

Location	Sale price per unit	Comments
		carports. Tenants are responsible for gas and electric bills. Fair condition at the time of sale. Buildings are 20 years old. Gross building area is 21,294/SF. Lot size is 45,738.
Great Falls	\$40,323	None

It is the opinion of the Board, that the market value of \$2,176,868 or \$23,407 per apartment unit considers the involvement of the government's HUD program.

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. Steer Inc. v. Department of Revenue, 245 Mont. 470, 1990.
5. Albright v. Montana Department of Revenue, 281 Mont. 196. 1997.
6. §15-7-111 MCA Periodic revaluation of certain taxable property.
7. §15-2-301 MCA Appeal of county tax appeal board decision (4)...The state tax appeal board may not amend or repeal any

administrative rule of the department. The state tax appeal board shall give an administrative rule full effect unless the Board finds a rule arbitrary, capricious, or otherwise unlawful.

8. The appeal of the DOR is hereby granted in part and denied in part and the decision of the Lewis & Clark County Tax Appeal Board is modified.

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ORDER

IT IS THEREFORE ORDERED by the State Tax Appeal Board of the State of Montana that the subject property shall be entered on the tax rolls of Lewis and Clark County by the Assessor of that county at the value of \$2,176,868 (Land - \$404,400; Improvements - \$1,772,468).

The appeal of the DOR is therefore granted in part and denied in part and the decision of the Lewis & Clark County Tax Appeal Board is modified.

Dated this 29th day of August 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 29th day of August, 2000, the foregoing Order of the Board was served on the parties hereto by depositing a copy thereof in the U.S. Mails, postage prepaid, addressed to the parties as follows:

Helena Patners LTD Partnership
c/o Don McBurney
2342 Nordic Loop
Whitefish, Montana, 59937

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

Lewis & Clark County Appraisal Office
City - County Building
316 North Park
Helena, Montana 59623

Lewis & Clark County Tax Appeal Board
c/o Gene Huntington, Chairman
725 North Warren
Helena, Montana 59601

DONNA EUBANK
Paralegal