

BEFORE THE STATE TAX APPEAL BOARD
OF THE STATE OF MONTANA

GAYLE ARLENE LABLANC,)	
)	DOCKET NO.: PT-1997-126
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>

The above-entitled appeal was heard on September 30, 1998, in the City of Butte, 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, Gayle LaBlanc, presented testimony in support of the appeal. The Department of Revenue (DOR), represented by Joe Rask, appraiser, 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, 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:

Improvements only located on Lot 3, Block 6 and the West 6.7' of Lot 7, Block 3, Lawlor Addition, Butte, County of Silver Bow, State of Montana (DOR ID number 1122200).

3. For the 1997 tax year, the DOR appraised the subject improvements at a value of \$51,450.

4. The taxpayer appealed to the Silver Bow County Tax Appeal Board on November 21, 1997 requesting a reduction in value to \$29,000. The stated reason on the appeal form was as follows:

Property not assessed the same as other four plexes. Some six plexes are assessed lower. Please review attached property appraisal comparisons. My appraised value is the average of 10 properties assessed as a 4-plex.

5. In its February 24, 1998 decision, the county board denied the appeal, stating:

The evidence presented by the Department of Revenue was sufficient to establish its value and the evidence presented by the taxpayer was of properties not located in the same area as the subject property

and was not sufficient to result in an adjustment.

6. The taxpayer then appealed that decision to this Board on February 27, 1998, with attached pages outlining the reasons for appeal.

TAXPAYER'S CONTENTIONS

The taxpayers attached statements to the appeal form in summary state the following:

I am appealing the decision of the Butte-Silver Bow County Tax Appeal Board because of the inequality of assessed values for comparable properties.

The assessment office denied the original appeal because my income statement fits the current income model, even though properties not in my neighborhood category generate more income as shown by **Exhibit D**. The model does not use actual income; the model rents are based on estimated rents in the neighborhood. The rents for my property are actual, and I did acquire actual rents for some of the comparisons I used. (**exhibit D**)

The County tax Appeal Board made no adjustment on the basis my comparisons were not in the same neighborhood category, even though many of the comparisons are **three** or **four** blocks from my property and **one** block from my neighborhood classification. Rental properties should be appraised equally, according to the income generated.

Taxpayers exhibit #1 are the comparable properties which were presented at the county hearing. Summarized, this exhibit illustrates the following:

When we initially received the reassessment (sic) of the 4-plex on 1034 W. Broadway, Assessment Code 0001122200, the projected increase was \$8360, for the future assessment of \$53,700. The current value is \$45,140. Initially this seemed reasonable, until upon investigation of comparison properties, we found six-plexes appraised for less than the 4-plex. Comparison properties were evaluated against the 4-plex, and based on these comparisons, the 4-plex has been reassessed (sic) unfairly, and is **currently** assessed higher than **future** assessments of comparable properties.

A copy of the 1996 Income Tax Form Schedule E is attached. Please note that the taxes and utilities represent 75% of the 1996 total, since we live in one of the apartments. We pay all heat and water. The tenants pay for their own electricity. The apartments are all one bedroom.

We purchased the building in August of 1990 for \$25,000 from Chris Swenson, who inherited the property from her father, Ron Parini. I have lived in the apartment since October, 1975. When Ron owned the building, he had a new boiler installed. The building was replumbed (sic) and reroofed (sic) in 1991-1992. New electrical boxes have been installed on the outside of the building, but the 4-plex has not been rewired.

Current Income:

1028 w. Broadway -	\$275.00
1030 W. Broadway -	\$290.00
1032 W. Broadway -	<u>\$290.00</u>
Total	\$855.00

A Rental Property Assessment comparison is attached. There are only two properties listed whose future assessed value is greater than the current value of the 4-plex; and, one is a 5-plex and one is a 6-plex.

It is apparent that our concerns for reassessment (sic) of the property are justified. **Please** review this assessment.

RENTAL PROPERTY ASSESSMENT COMPARISON

- A. **Six-Plex, 707, Assessment Code 1523000**
Old - \$34,400 New - \$49,200
- B. **Wilma Apartment, 737 W. Park, Assessment Code 214500**
Old - \$31,400 New - \$42,000
- C. **Six-Plex, 718 W. Park, Assessment Code 1061500**
Old - \$45,000 New - \$39,400??
- D. **Four-Plex, 634-636-638-640 W. Broadway, Assessment Code 664300**
Old - \$31,500 New - \$31,100 ??
- E. **Elderkin Building, 301 W. Park, Assessment Code 667400**
Old - \$62,290 New \$30,300 ??
- F. **Five-Plex, 401 W. Granite, Assessment Code 649500**
Old - \$59,700 New - \$54,000 ?
- G. **Four-Plex, 730-730 ½ W. Galena, Assessment Code 1152300**
Old - \$35,800 New - \$31,000 ??
- H. **Garland Apartments, 320-322 W. Broadway, Assessment Code 232900**
Old - \$27,416 New - \$45,200
- I. **Four-Plex, 510-512-514-516 S. Washington, Assessment Code 318200**
Old - \$32,700 New - \$42,400
- J. **Four-Plex, 1019-1021 Front Street, Assessment Code 1627400**
Old - \$23,300 New - 23,400 ????
- K. **Four-Plex, 1025 Front Street, Assessment Code 82600**
Old - \$21,700 New - \$20,800 ????

- L. **Four-Plex, 834-836 W. Granite,** Assessment Code 1607900
Old - \$37,100 New - \$45,900
- M. **4-Plex, 729-731-731½-733 W. Broadway,** Assessment Code 962400
Old - \$37,100 New - \$30,500 ???
- N. **5-Plex, 626 W. Galena,** Assessment Code 1121100
Old - \$37,000 New - \$45,700 ??

The local board's decision stated "...evidence presented by the taxpayer was of properties not located in the same area as the subject property and was not sufficient to result in an adjustment." As a result of that decision, the taxpayer stated she attempted to select comparable properties within the same neighborhood as the subject property, neighborhood 607G. This neighborhood determination is made by the DOR. The taxpayer stated she didn't understand how properties that are essentially similar in most respects can have such different market values when they are located within two to three blocks from the subject property. (properties illustrated in ex. #1)

Taxpayers exhibit #2 illustrates eight rental properties. Six of the eight are located in neighborhood 607G, the subject neighborhood. Page one of taxpayers exhibit #2 is a table titled "Rental Property Assessment Comparison - 607G", and illustrates the following.

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PROPERTY	OLD VALUE	NEW VALUE	NEIGHBORHOOD	UNITS
AA	\$33,800	\$22,700	610A	4 efficiencies, unit heat
BB	\$36,700	\$63,700	607G	4 2-bedrooms, unit heat
CC	\$42,400	\$68,500	607G	4 2-bedrooms, central heat
DD	\$51,800	\$89,600	607G	4 2-bedrooms, 2 1 bedrooms
EE	\$42,000	\$70,000	607G	4 2-bedrooms, unit heat
FF	\$57,200	\$71,600	607G	6 2-bedrooms, central heat
GG	\$35,360	\$35,800	610A	5 1-bedrooms, unit heat
HH	\$63,600	\$70,300	607G	4 2-bedrooms, unit heat

The taxpayer testified that differences exist between her selected comparable properties and the subject, i.e., number of units, age, heat as a landlords expense or a tenants expense. She indicated that the location is similar for each of the properties, the upper west-side of Butte. The DOR has determined different neighborhoods within the upper west-side. The taxpayer stated that her frustration is that properties located in the adjacent neighborhood, two to three blocks from the subject are valued so much less than the subject property.

Taxpayers exhibit #3 is a map illustrating most of the locations of the comparable properties listed on exhibits #1 and #2 as well as the subject.

The taxpayer submitted photographs (ex. 7) of a majority of the comparable properties described and illustrated on exhibits #1, #2 and #3.

DOR'S CONTENTIONS

The DOR has determined the market value of the subject property to be \$2,250 for the land and \$51,450 for the improvements. (ex. A, pg. 6)

The DOR's neighborhood determination for the subject property is identified as "neighborhood trend 607G". (ex. A, pg. 2) The subject is located in the vicinity of Montana Tech College; therefore, its location is superior to those properties located in "neighborhood 610A".

The income approach to value was the DOR's selected appraisal method. (ex. B) summarized, this exhibit illustrates the following:

<u>Income Portion</u>	
4 1-bedroom @ \$250.00	= \$1,000
Twelve Months	x <u>12</u>
Total	\$12,000
Percent Occupancy	x <u>90%</u>
Effective Gross Income	\$10,800
Total Expenses	- \$ 3,264
Management	- <u>\$ 500</u>
Net Income	\$ 6,996
 <u>Income Capitalization</u>	
Equity Ratio 1.00 x Cash on Cash	.111
Effective Tax Rate	<u>.019</u>
Total Capitalization Rate	.130
Net Income \$6,996 @ .130	
Value, Income Approach	\$53,800 (\$6,996/.13)
 <u>Parcel Commercial Value Summary</u>	
Cost	\$64,250
Income	\$53,800

Mr. Rask testified the unit rent the DOR utilized within their models is what would be considered typical rent for the area and not actual reported rents.

DOR's exhibit C and D are sales of rental properties in neighborhoods 610A and 607G respectively, summarized this exhibit illustrates the following:

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Property	Subject	Sale #1	Sale #2	Sale #3	Sale #4
Sale \$		\$38,000	\$25,000	\$25,000	\$33,000
# Units	4	4	4	3	4
# 1 Bdrm	4	4	4	3	0
# 2 Bdrm	0	0	0	0	2
Tot Bdrms	4	4	4	3	8
Tot Liv Area	3840	3192	3464	2670	4240
Yr Blt		1900	1900	1910	1900
Quality	Av	A-	F+	A-	F+
NBHD	607 G	10 A	10 A		
DOR Value	\$53,700	\$29,754	\$30,516	\$31,637	\$41,500
DOR/SP Ratio		0.78	1.22	1.27	1.26
\$ Per Sq Ft	\$13.98	\$11.90	\$7.22	\$9.36	\$7.78
\$ Per Unit	\$13,425	\$9,500	\$6,250	\$8,333	\$8,250

Property	Subject	Sale #1	Sale #2	Sale #3
Sale \$		\$54,938	\$70,000	\$57,000
# Units	4	4	5	3
# 1 Bdrm	4	0	5	1
# 2 Bdrm	0	4	0	2
Tot Bdrms	4	4	5	5
Tot Liv Area	3840	4928	34645	3028
Yr Blt				
Quality	Av	Av	Av	
NBHD	607 G	607 G	607 G	607 G
DOR Value	\$53,700	\$68,283	\$68,283	\$47,286
DOR/SP Ratio		1.14	.98	.83
\$ Per Sq Ft	\$13.984	\$11.148	\$15.07	\$18.824
\$ Per Unit	\$13,425	\$13,735	\$14,000	\$19,000

Mr. Rask testified the capitalization rate for neighborhood 607G is 13% and for neighborhood 610A is 18%. These rates were derived from sales within the respective neighborhoods. Mr. Rask testified that neighborhood 610A is a less desirable neighborhood than 607G the subject neighborhood.

Mr. Rask presented sales information of the properties listed on taxpayers exhibit #1 and the reported sale dates and sale amounts are as follows:

<u>Property</u>	<u>Neighborhood</u>	<u>Sale Date</u>	<u>Sale Amount</u>
718 W. Park	610G	4/92	\$40,000
634 W. Broadway	610G	3/93	\$33,000
301 W. Park	621	10/92	\$65,000
626 W. Galena	not identified	8/97	\$58,500

BOARD'S DISCUSSION

The taxpayers main concern is that property within the DOR's neighborhood determination of 610A are being valued less than her property, and from all indications they are for the most part similar i.e. use, construction, age, etc. *The Appraisal of Real Estate, 11th Edition, Characteristics of Neighborhoods and Districts:*

A neighborhood exhibits a greater degree of uniformity than the larger surrounding area. Obviously, no group of inhabitants, buildings, or business enterprises can possess identical features, but a neighborhood is perceived to be relatively uniform. Many shared features may be evident in a neighborhood, including similar building types and styles, population characteristics, economic profiles of occupants, and zoning regulations that affect land use. The variables that suggest similarity are not limited to physical characteristics. The social, economic, and governmental forces operating within a neighborhood contribute as much to its definition and the physical environment. The varied nature of different neighborhoods reflects this fact. Similarity may also be indicated by the dominant land use, rent and occupancy levels, the credit strength of occupants, and the ages of the buildings.

The Board agrees that neighborhood delineation's should be recognized within the appraisal process, and based on the DOR's exhibits and testimony this has been recognized in the mass appraisal process.

Mr. Rask testified to the various differences in rents between the two neighborhood income models as follows:

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<u>Unit Type</u>	Neighborhood 610A <u>Monthly Rent</u>	Neighborhood 607G (subject) <u>Monthly Rent</u>
Efficiency	\$185	\$190
1 Bedroom	\$225	\$250
2 Bedroom	\$275	\$300
3 Bedroom	\$350	\$300
Capitalization Rate	18%	13%

As noted above, the rents between the two neighborhoods do not vary significantly. For some unknown reason the monthly rent for three bedroom units in neighborhood 610A is \$50 per month higher than the same unit rent in the subject neighborhood. Mr. Rask testified the capitalization rates were derived from the sales of rental property. The *International Association of Assessing Officers, Property Assessment Valuation, Market Comparison Method:*

This is a second method used in selection the property discount rate and is appropriate when comparable information from competitive properties can be obtained. It is very reliable because it directly reflects the discount rate indicated by actual investments in the income-producing property neighborhood. In theory the market comparison method is quite simple, since it involves only dividing the net income after recapture and after real estate taxes for a comparable property by its sale price. The formula used is "income divided by value equates rate." The result is the discount rate for the property under analysis. (emphasis added)

Mr. Rask testified the expenses within the income model for neighborhood 610A are higher than the subjects neighborhood model.

Based on Mr. Rask's testimony, neighborhood 610A has lower rents, higher expenses and a higher capitalization rate, all of which have a value reducing affect.

The income and expense information from the taxpayers 1996 tax return (ex.5) in comparison to the DOR's income approach for the subject illustrates the following:

	<u>Taxpayer</u>	<u>DOR</u>
Rental Income	\$ 9,100	\$12,000
Income Adj.(owners unit)	\$ 3,480	\$ 0
Gross Income	<u>\$12,580</u>	<u>\$12,000</u>
Vacancy/Collection Loss	NA	(\$ 1,200)
Effective Gross Income (EGI)	<u>\$12,580</u>	<u>\$10,800</u>
 Expenses		
Expenses		(\$ 3,264)
Management		(\$ 540)
Insurance	(\$ 316)	
Supplies	(\$ 19)	
Utilities	(\$ 3,126)	
Repairs	(\$ 630)	
Total Expenses	<u>(\$ 4,091)</u>	<u>(\$ 3,804)</u>
 Net Operating Income (NOI)	 \$ 8,489	 \$6,996

Expense Ratios

Taxpayer - Expenses/EGI - \$4,091/\$12,580 = 32.5%

DOR - Expenses/EGI - \$3,804/\$10,800 = 35.2%

The taxpayers data is based on one years actual income and expenses. Appraisal methodology recognizes that typical income and expense be used when valuing property. The above analysis indicates that the decisive factor in the determination of the market value for the subject rests with the appropriate overall capitalization rate. Mr. Rask testified the DOR's information suggested a capitalization rate of 13% for the subject neighborhood. If the subject property were to be located in neighborhood 610A, approximately two blocks east, it would benefit with lower unit rent of \$225 per month, higher expenses and a

higher capitalization of 18%. The approximate value indication based on being located in neighborhood 610A is \$33,167. A variance of 5% in a capitalization rate significantly impacts the overall value indication.

The Board is concerned with the appropriate capitalization rate applied to the net operating income as determined by the DOR. There is nothing in the record to indicate that 13% or 18% is the appropriate rate. The Board is left to analyze the sales of the various comparable properties as testified to, along with the taxpayers purchase in 1990 for \$25,000. The taxpayer testified that she purchased the property from an individual who had inherited the property. Mrs. LaBlanc was a tenant at the time of purchase and testified the property was not listed through Multiple Listing Service or exposed to the open market. In addition, there is nothing in the record to indicate that the owner was under any undue influence to sell the property. Mrs. LaBlanc being a tenant of the building may have had a distinct advantage of having knowledge of the overall condition and upkeep of the property. This sale is somewhat dated with respect to the DOR date of value being January 1, 1996. It is the Board's opinion the sale cannot be ignored and will be given the weight it deserves. The following table is the Board's illustration of sales presented in this hearing:

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Sales located in Neighborhood 610A.

Property/ Location	634 W. Broadway	718 W. Park	710 W. Galena	729 W. Broadway	732 W. Broadway
Neighborhood	610A	610A	610A	610A	610A
Sale Date	3/93	4/92	Unknown	Unknown	Unknown
Sale Price	\$33,000	\$40,000	\$38,000	\$25,000	\$25,000
# of units	4	6	4	4	3
Efficiency units	0	0	0	0	0
1 bedroom units	4	0	4	4	3
2 bedroom units	0	6	0	0	0
3 bedroom units	0		0	0	0
\$/Unit	\$8,250	\$6,667	\$9,500	\$6,250	\$8,333

Sales located in Neighborhood 607G.

Property/ Location	328 S. Excel	1107 W. Park	957 W. Broadway	Subject/ 1034 W. Broadway
Neighborhood	607G	607G	607G	607G
Sale Date	1/95	2/94	9/92	8/90
Sale Price	\$53,700	\$57,000	\$70,000	\$25,000
# of units	4	3	5	4
Efficiency units	0	0	0	0
1 bedroom units	0	1	5	4
2 bedroom units	4	2	0	0
3 bedroom units	0	0	0	0
\$/Unit	\$13,425	\$19,000	\$14,000	\$6,250

Subject sale and the 1997 DOR value.

Property	Subject	Subject	%/ Change
Appraisal Date/ Sale Date	8/90	1/1/96	64 months
Increase per month (115%/64)			1.8% month
Sale Price	\$25,000	\$53,700	+115%
\$/Unit (4 units)	\$6,250	\$13,425	+115%

Ms. LaBlanc's concern before this Board is that properties located in neighborhood 610A are being valued less than her property which is located in neighborhood 607G. The Board rejects the taxpayer's arguments in favor of reduced valuation based upon her comparison of her assessment with those located in the adjacent neighborhood.

...And in no proceeding is one to be heard who complains of a valuation which, however

erroneous it may be, charges him only with a just proportion of the tax. If his own assessment is not out of proportion, as compared with the valuations generally on the same roll, it is immaterial that some one neighbor is assessed too little; and another too much. (Emphasis supplied.) State ex rel. Schoonover v. Stewart, 89 Mont 257, 297 Pac. 476).

The Board does agree with the DOR's testimony that rents may actually be higher the closer the property is located to Montana Tech. In addition, the vacancy factors could be less based on the proximity to the college, reducing a potential buyer's risk; therefore, resulting in a lower capitalization rate. 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)). As previously stated, there has been nothing submitted to the Board to support either a 13% or 18% capitalization rate.

Three of the five sales as testified to by the DOR are located on West Broadway in neighborhood 610A. The subject property is also located on West Broadway, approximately four to five blocks west of the sales. In addition, these sales each consist of one-bedroom units. It is the Board's opinion the subject shall be valued based on the income model for neighborhood

607G with the application of an 18% overall capitalization rate:

<u>Income Portion</u>	
4 1-bedroom @ \$250.00	= \$1,000
Twelve Months	x <u>12</u>
Total	\$12,000
Percent Occupancy	x <u>90%</u>
Effective Gross Income	\$10,800
Total Expenses	- \$ 3,264
Management	- \$ 500
Net Income	<u>\$ 6,996</u>

<u>Income Capitalization</u>	
Equity Ratio 1.00 x Cash on Cash	.161
Effective Tax Rate	<u>.019</u>
Total Capitalization Rate	.180
Net Income \$6,996 @ .18	
Value, Income Approach	\$38,867 (\$6,996/.18)
Land	\$ 2,250
Improvements	<u>\$36,616</u>
Total	<u>\$38,867</u>

This value indication of \$38,867 reflects an increase of 55% from the time the taxpayer purchased the property in 1990 for \$25,000.

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.

State of Montana that the subject property shall be entered on the tax rolls of Silver Bow County by the Assessor of that county at the 1997 tax year value of \$2,250 for the land and \$36,617 for the improvements. The appeal of the taxpayer is therefore granted in part and denied in part and the decision of the Silver Bow County Tax Appeal Board is modified.

Dated this 21st of January, 1998.

BY ORDER OF THE
STATE TAX APPEAL BOARD

(S E A L)

PATRICK E. MCKELVEY, Chairman

GREGORY A. THORNQUIST, Member