

BEFORE THE STATE TAX APPEAL BOARD
OF THE STATE OF MONTANA

THE DEPARTMENT OF REVENUE)	
OF THE STATE OF MONTANA,)	
Appellant,)	DOCKET NO.: PT-1999-29
)	
-vs-)	
)	
SUNNYVIEW TERRACE ASSOCIATES,)	FACTUAL BACKGROUND,
)	CONCLUSIONS OF LAW,
Respondent.)	ORDER and OPPORTUNITY
)	<u>FOR JUDICIAL REVIEW</u>

The above-entitled appeal was heard on July 19, 2000, in the City of Billings, 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.

Maureen Celander, an appraiser with the Yellowstone County Appraisal Office, presented testimony in support of the Department of Revenue's appeal. The taxpayer, represented by Mike Mathew, agent, presented testimony in opposition thereto. Testimony was presented and exhibits were received and a schedule for a post-hearing submission from the DOR and an opportunity for a response from the taxpayer was established. The duty of the Board is to determine the market value of the property based on the preponderance of the evidence. The State of Montana defines "market value" as **MCA §15-8-111. Assessment - market value standard**

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

DOR is the appellant in this proceeding and therefore has the burden of proof. It is true, as a general rule, that the appraisal of the Department of Revenue is presumed to be correct and that the taxpayer must overcome this presumption. The Department of Revenue should, however, bear a certain burden of providing documented evidence to support its assessed values. (Western Airlines, Inc., v. Catherine Michunovich et al., 149 Mont. 347, 428 P.2d 3,(1967)). Based on the evidence and testimony, the decision of the Yellowstone County Tax Appeal Board is affirmed in part and denied in part.

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 that is the subject of this appeal is described as follows:

Land only: Lots 4-6, 2 of 15 amended, Sunnyside Subdivision 3rd and Lot 10A of Sunnyside Subdivision to the City of Billings, County of Yellowstone, State of Montana. (Assessor ID number A-16479A).

3. For the 1999 tax year, the DOR appraised the subject land at a value of \$434,870.
4. On January 13, 2000, the taxpayer appealed to the Yellowstone County Tax Appeal Board, citing the following reason for appeal:

Sales presented were for land with same zoning as subject property and do represent fair value for land.

5. In its March 31, 2000 decision, the County Board reduced the subject land value to \$1.25 per square foot:

The Dept. of Revenue has a land value of \$2.70 per sq ft on this land. Most of the comparable land values in that area were at \$1.25 per sq ft. The Board feels \$1.25 per sq ft is more equitable & places land at \$1.25 per sq ft.

6. The DOR then appealed that decision to this Board on April 27, 2000 because:

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

7. In preparation for the appeal, the Board reviewed the record created before the local appeal board. The Board contacted the DOR prior to the hearing, requesting it be prepared to offer additional evidence and testimony as to the income approach to

value that was employed for subject property.

STATEMENT OF THE ISSUE

The issue before the Board is the market value of the real property.

DOR'S CONTENTIONS

DOR exhibit A, pages 2 - 15, consists of the property record card. The DOR has determined the subject site comprises 100,032 square feet, priced at \$2.70 per square foot, for a total value of \$270,086.

DOR exhibit A, pages 16 & 17, consists of the sales used by the DOR to establish the land value for the subject along with a map identifying the locations. Summarized, the sales for DOR neighborhood 611A - 621A, CALP model #126, illustrate the following:

Base Size	7,000 SF
Base Rate	\$2.70
Adjustment Rate	\$2.70

<u>Sale #</u>	<u>Sale Date</u>	<u>Lot Size (SF)</u>	<u>Sale Price</u>
#1	7/92	7,000 SF	\$20,300
#2	9/92	7,000 SF	\$24,450
#3	8/95	7,000 SF	\$42,000
#4	2/93	7,000 SF	\$1,400
#5	1/92	8,190 SF	\$7,700
#6	1/92	7,500 SF	\$9,300
#7	2/92	7,000 SF	14,800

DOR exhibit A, page 18 is a copy of the AB-26 form for property review filed by the taxpayer on June 29, 1999 with the Department of Revenue in Yellowstone County. The following reason

was cited in the request that the DOR review the subject appraisal:

The parcels were priced at \$.63 sf & \$.53 sf during prior cycle. There is no data to show increase to \$2.70 sf. See sales data for northside sales. 1995 sale - \$1.18 SF; 1997 sale - \$1.05 sf.

The DOR answered the request on December 20, 1999. No adjustments were made to the subject appraisal, stating:

A review of the property was made. Residential land sales were not used as valuation benchmark for commercial apartment land. This valuation is comparable with other apartment use land in this neighborhood.

DOR Exhibit A, pages 19 & 20 is a copy of the income approach appraisal that was used to value the subject property. Summarized, this exhibit illustrates the following:

Parcel – 03-1033-32-1-20-12-0000: 1109 22nd Street – 60 two bedroom units			
Parcel – 03-1033-32-1-20-05-0000: 1101 22nd Street – 32 one bedroom units			
<u>Income</u>			
60 two bedroom units	\$425	=	\$25,500
32 one bedroom units	\$315	=	\$10,080
Total monthly income		=	\$35,580
Twelve months		X	<u>12</u>
Potential Gross Income (PGI)		=	\$426,960
Percent occupancy		X	<u>90%</u>
Effective Gross Income (EGI)		=	\$384,264
<u>Expenses</u>			
Total expenses		-	(\$102,393)
Management	8%	-	<u>(\$ 30,741)</u>
Total expenses & management		-	<u>(\$133,134)</u>
Net Income		=	\$251,130
<u>Capitalization</u>			
Equity ratio			10%
Effective tax rate			<u>0</u>
Total capitalization rate			10%
Value – Income Approach	\$251,130/10%		\$2,511,300

The DOR's value indication from the cost approach is

\$2,752,070. (Exhibit A, pgs. 19 & 20)

The DOR analyzed apartment sales that occurred in the subject neighborhood. Exhibit A, pages 21 and 22 offer sales information, a map indicating the location and a per apartment unit comparison. Summarized, this exhibit illustrates the following:

Sale #	Sale Date	# of Units	Sale Price	Sale Price per Apartment Unit
#1	8/95	2 – one bedroom units	\$78,000	\$39,000
#1	10/96	2 – one bedroom units	\$123,500	\$61,750
#2	7/97	4 – two bedroom units	\$130,000	\$32,500
#3	7/97	4 – two bedroom units	\$130,000	\$32,500
#4	7/97	4 – two bedroom units	\$130,000	\$32,500
#5	11/98	3 – one bedroom units 1 – two bedroom unit	\$95,000	\$23,750
#6	4/99	6 – one bedroom units	\$160,000	\$26,667
Date of Value		# of Units	Market Value	Price per Apartment Unit
Subject	1/97	60 – two bedroom units	\$1,837,700	\$30,628
Subject	1/97	32 – one bedroom units	\$673,600	\$21,050

The DOR's post-hearing submission included vacant land sales of larger parcels of land developed with multifamily projects. Summarized, this data illustrates the following:

The following information is the result of searching through 3,635 sales to find the data requested by the State Tax Appeal Board. There are very few vacant land sales that have been developed as large apartment units. Maps are also attached to help locate the sales listed below.

Vacant Land Sales Developed as Apartment Living Units

# Of Units	Vacant Land Sale Date	Sale Price	Sq. Ft. Sale Price	Valid Sale **	Land Size Sq. Ft.	200 D.O.R. Sq. Ft. Valuation
81*	07/1998	\$225,000	\$1.71	Y	131,464	\$1.45
60	12/1992	\$170,000	\$.98	Y	174,240	\$.73
63	07/1996	\$145,000	\$.87	Y	166,878	\$.73

* To be developed.

** Y = yes, valid sale, N = No, invalid sale.

NOTE: A large apartment complex consisting of 134 units was developed in Circle Fifty Subdivision located on the west-end of Billings. I could only find two lots that were purchased that were not owned by the developers. These sales were not validated at the time they sold. The information is as follows:

# Of Units	Vacant Land Sale Date	Sale Price	Sq. Ft. Sale Price	Valid Sale **	Land Size Sq. Ft.	200 D.O.R. Sq. Ft. Valuation
134	11/1995	\$70,806	\$2.00	N	35,402	\$1.40

The two lots were combined onto this geocode with 12 other lots. (geo-code 03-1032-33-4-08-01-0000)

The Department of Revenue valuation on the square foot comparison is valued lower than the sale prices in each of the demonstrated sales shown above. None of these sales are located within the subject neighborhood. The demonstrated trend would suggest that the Department of Revenue values are consistently lower than what the market will support on larger lots for apartment development.

The DOR's income approach capitalized the net operating income (NOI) at 10%. The 10% capitalization rate was established from sales of apartment property. Summarized, the DOR post-hearing submission offers support for the 10% capitalization rate as follows:

<u>Unit Type</u>	<u>Property 12</u>	<u>Property 14</u>	<u>Property 15</u>	<u>Property 18</u>
Efficiency	5			
1 Bdrm			4	1
2 Bdrm		2		1
3 Bdrm				1
Total Units	5	2	4	3
Lot Size (sf)	7,000	7,000	7,000	7,500
Sale price	\$29,500 or \$37,500	\$84,900	\$80,000	\$89,900
Cap rate	33.73%	9.84%	12%	9.06%
Price per unit	\$5,900	\$42,450	\$20,000	\$29,967

01 – APARTMENT MODELS

Mod #	<u>Monthly Rental Income</u>		Occup.	<u>Expense</u>		Exp. PSF	<u>Income Capital</u>
	1 Br	2 Br		Mgt.	Capitalization Rate		
4	\$315	\$425	90%	8%	\$1.45	10%	

Ms. Celander reviewed the sales presented by Mr. Mathew at the local hearing and determined that these transactions should not be considered because they either had structures located on the property or are residential lots. Therefore the DOR contends they

are not comparable to the subject property.

Ms. Celander testified to the following with respect to the income approach: *"...we established the income valuation based on analysis of apartment units within this neighborhood. The apartment analysis that we utilized is, we send out mailings to all the apartment owners within Yellowstone County. We got 45% rate of return on that mailing for the information to help us utilize for our I & E (income & expense) analysis on apartment buildings..."*

TAXPAYER'S CONTENTIONS

Taxpayer exhibit #1 consists of five sales along with a map identifying the location. The following table summarizes this exhibit:

<u>Sale</u>	<u>#5 *</u>	<u>#6 *</u>	<u>A **</u>	<u>B **</u>	<u>C **</u>
Sale Date	1/92	1/92	10/18/95	9/27/97	Summer 1996
Lot Size (SF)	8,190	7,500	28,000	5,250	72,070
Sale Price	\$7,700	\$9,300	\$33,000	\$5,500	\$90,000
Sale Price/SF	\$.94	\$1.24	\$1.18	\$1.05	\$1.25
Adjusted Price	\$9,733	\$11,755			\$64,863 - \$72,070
Adjusted Price/SF	\$1.19	\$1.57			\$.90 - \$1.00

* Denotes these sales originated from DOR's land pricing model.

** Denotes these sales originated from taxpayer's information.

A fee appraisal was done on sale #3, and a page from that report was attached. Summarized, the exhibit states the following:

...It seems probable that **subject land/site value** ranges between \$2,000.00 and \$3,000.00 per unit or, say, **the \$2,500.00 per unit level.** Therefore,

Land Value

26 Units @ \$2,500/unit

\$65,000.00

BOARD DISCUSSION

The DOR appraised the subject property based on the income approach to value. This approach, as applied by the DOR, values the entire property: land and improvements. The DOR must determine a value attributable to the site. Sales analysis normally accomplishes this task. The DOR selected seven land sales within the DOR established neighborhood.

Ms. Celander testified that the zoning for the subject property is RMF-R (residential multifamily - residential). When asked the zoning of the DOR's land sales, she was unsure. Ms. Celander was quick to point out the non-comparability of the taxpayer's sales based on the fact they are zoned R-7000 (residential), but she was uncertain if the sales the DOR used were not, in fact, zoned R-7000 themselves. In addition, the DOR stated on the property review form (AB-26) that residential property was not considered when valuing the subject property. Zoning dictates the allowable uses for a property and certainly can impact value.

The subject property consists of 161,063 square feet. It is difficult for this Board to comprehend how a site of this size can be considered comparable to properties of 7,000, 7,500 and 8,190 square feet. In addition, the DOR land valuation model doesn't consider a size adjustment for anything over 7,000 square feet. The Board does not consider the DOR's attempt to value the subject

property valid, based on the properties it has selected. The Board requested the DOR supplement the record with sales of larger property that have been or will be developed with larger multifamily projects in Billings, regardless of the location. The following are those sales:

Vacant Land Sales Developed as Apartment Living Units		
Vacant Land Sale Date	Sale Price	Sq. Ft. Sale Price
07/1998	\$225,000	\$1.71
12/1992	\$170,000	\$.98
07/1996	\$145,000	\$.87
11/1995	\$70,806	\$2.00

Based on the sale price per square foot of the larger multifamily sites, there is no support for the DOR land value of \$2.70 per square foot.

As mentioned in the findings (#7), the Board requested the DOR be prepared to offer evidence and testimony as to the income approach. There is nothing in the record to suggest that the DOR's attempt to value property based on the income approach and arriving at a total market value of \$2,511,300 is not appropriate. The taxpayer's agent did not provide contradicting evidence with respect to apartment rents, vacancy, expenses or capitalization rates. In addition, the taxpayer's agent provided no evidence of sales of apartment projects.

Where it appears the DOR has erred is in the allocation of value to land and improvements. It is the opinion of the Board that based on the evidence, the value of the land as determined by

the Yellowstone County Tax Appeal Board be affirmed. In addition, the values of the structures are adjusted upward to reflect this reduction in land value. The overall value of the property remains unchanged from the original DOR assessment.

CONCLUSIONS OF LAW

1. The State Tax Appeal Board has jurisdiction over this matter. **§15-2-301 MCA.**

2. **§15-8-111, MCA. Assessment - market value standard - exceptions.** (1) All taxable property must be assessed at 100% of its market value except as otherwise provided.

3. **15-2-301, MCA, Appeal of county tax appeal board decisions.** (4) In connection with any appeal under this section, the state board is not bound by common law and statutory rules of evidence or rules of discovery and may affirm, reverse, or modify any decision.

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

5. The appeal of the Department of Revenue is hereby

granted and the decision of the Yellowstone County Tax Appeal
Board is hereby affirmed in part and denied in part.

//
//
//
//
//
//
//
//
//
//
//
//
//
//
//
//
//
//
//
//
//
//
//

ORDER

IT IS THEREFORE ORDERED by the State Tax Appeal Board of the State of Montana that the subject land shall be entered on the tax rolls of Yellowstone County by the Assessor of that county at the 1999 tax year value of \$201,329 as determined by the Yellowstone County Tax Appeal Board and the 1999 tax year value of the improvements are valued at \$2,309,971 as determined by the State Tax Appeal Board.

Dated this 17th day of October, 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 ____ day of September, 2000, the foregoing Order of the Board was served on the parties hereto by depositing a copy thereof in the U.S. Mails, postage prepaid, addressed to the parties as follows:

Mike Mathew
Agent
1119 North 31st Street
Billings, Montana 59101

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

Yellowstone County Appraisal Office
175 North 27th Street
Suite 1400
Billings, Montana 59101

Elwood "Woody" Hannah
Chairman
Yellowstone County Tax Appeal Board
2216 George Street
Billings, Montana 59102

Donna Eubank, paralegal