

BEFORE THE STATE TAX APPEAL BOARD  
OF THE STATE OF MONTANA

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JAMES W. VAUGHT,	)	DOCKET NO.: PT-1999-23
	)	
Appellant,	)	
	)	
-vs-	)	FACTUAL BACKGROUND,
	)	CONCLUSIONS OF LAW,
THE DEPARTMENT OF REVENUE	)	ORDER and OPPORTUNITY
OF THE STATE OF MONTANA,	)	<u>FOR JUDICIAL REVIEW</u>
	)	
Respondent.	)	

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The above-entitled appeal was heard on August 3, 2000, in the City of Havre, Montana, in accordance with an order of the State Tax Appeal Board of the State of Montana (the Board). The notice of the hearing was duly given as required by law.

The taxpayer, James Vaught, presented testimony in support of the appeal. The Department of Revenue (DOR), represented by Appraiser Mike Hofeldt, presented testimony in opposition to the appeal. Testimony was presented, and exhibits were received. 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:

**STATEMENT OF ISSUE**

The issue before the Board in this appeal is the proper valuation of a building with a basement that has been contaminated by diesel fuel.

**FACTUAL BACKGROUND**

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

South one-half of Lot Eight, Block Four, Section 5, Township 32N, Range 16E, Havre Original Townsite; street address of 309 First Street, City of Havre, County of Hill, State of Montana; geo code #12-4441-05-4-04-03-0000.

3. For the 1999 tax year, the DOR appraised the subject property at a value of \$12,540 for the land and \$16,900 for the improvements.

4. The taxpayer appealed to the Hill County Tax Appeal Board on December 17, 1999, requesting a reduction in value to \$0 for the land and \$0 for the improvements, stating:

*Basement contaminated with diesel fuel.*

5. In its February 7, 2000 decision, the county board denied the taxpayer's request, stating:

*Board feels taxes are at a minimum. His first recourse is with the railroad. He still lives at this property and still has income gained at this property.*

6. The taxpayer appealed that decision to this Board on February 11, 2000, stating:

*Basement contaminated with diesel fuel.*

#### **TAXPAYER'S CONTENTIONS**

Mr. Vaught distributed a list of the exhibits he would present to the Board in support of his appeal. Exhibit 1 is a copy of an article from the August 19, 1998 *Havre Daily News* entitled "Diesel cleanup could take 50 to 200 years." Mr. Vaught explained that "*this article really draws attention to the magnitude of the problem that I as a property owner face with regard to diesel pollution and contamination here in Havre, Montana.*" In pertinent part, the article states:

A packed house of concerned, and obviously unhappy, citizens turned out Tuesday to hear the Montana Department of Environmental Quality (DEQ) explain the proposed Administrative Order and Work Plan for the Burlington Norther (sic) Santa Fe refueling station in Havre.

It is part of a process that, according to DEQ officials, will take at least another year and a half.

The length of time the process, which began in 1989, is taking concerned many of those attending the meeting.

Asked by one person in the crowd how long it would take for a natural breakdown of the diesel contamination in Havre to occur, Doug Martin, project officer for the BNSF site, said he had no idea how long it might take.

"It depends on a lot of the characteristics that they're testing for now," he said. "It could take 50 years, it could take 200 years."

Mike Trombetta, hazardous waste site cleanup bureau chief, told the crowd "that number hasn't been calculated yet..."

"Well, what are we going to do in the meantime," asked another audience member. "Dig 50 feet out of my acre of land and replace it with clean dirt, or what."

Martin answered, "Once this plan is completed ... hopefully we'll be able to answer that within the next year and a half."

After the meeting, Trombetta said the Superfund process is "slow and cumbersome," but that it is one of the "safeties" in the system that allows people to clean up these sites before DEQ has to issue an order.

Trombetta said he believes this is one of the things that is happening at the Havre site with what he called "interim action" on the part of MNSF...

Doug Martin, DEQ project officer for the Havre facility, told the standing room only crowd that DEQ estimates 30 acres, of the 90 acres of BMSF property that have been tested, are contaminated by diesel.

He also estimates that within the 30 acres are 500,000 to 1.5 million gallons of diesel fuel remaining in the ground.

To date more than 110,000 gallons of fuel has (sic) been removed from the ground by BNSF.

"That is my estimate," Martin said when asked whether the figure was right. "I took a very simplistic view."

He added that he was sure if BNSF conducted their own tests they would come up with a different number...

When asked how long it may take to completely remove the diesel saturating the Havre site, Martin responded, "The free product we've collected so far is over 100,000 gallons in 10 years. If we had 1 million gallons out there it would take 100 years."

Mr. Vaught stated that it is just "*mind-boggling*" to think that there may be 500,000 to 1.5 million gallons of diesel fuel remaining in the ground, and if it takes from 50 to 200 years to clean up the mess, "*I personally can't wait that long.*" As "*evidence and visual proof of the contamination I'm faced with in my building,*" Mr. Vaught presented a jar of diesel fuel floating on water that was collected from his basement, and stated that "*one of the characteristics of diesel fuel is that it's very sticky, and it's very low on evaporate rates as compared with gasoline, just because of the way it's made.*" Since a similar exhibit had been presented at the county tax appeal board hearing and is a part of the record in this appeal, the jar was not entered as an exhibit. The plastic spoon he had used for collecting the sample was also presented to the Board but

not entered as an exhibit. Mr. Vaught showed a "new" measuring spoon from his kitchen as a comparison with the measuring spoon from the same set, which had partially dissolved in the collection of the diesel fuel sample. He also presented a soil sample, obtained from his basement on July 30, 2000, and pointed out the discoloration of the soil.

Taxpayer's Exhibit 2 is a photograph of the trench in the basement from which Mr. Vaught had extracted the soil sample and contaminated water. He explained that approximately half of the basement (the front or south portion) is a concrete slab and the other half (the north portion, about 200 feet from the railroad tracks and close to the refueling facility) is "*just a dirt floor.*" He pointed out the visqueen in the photograph, which usually covers the trench and the contaminated basement area but was pulled aside for the photograph so the trench would be visible. The visqueen acts as a vapor barrier, masking any noticeable diesel odor in the rest of the building. Mr. Vaught stated that he sells candles in his retail store, and their scent also helps hide any diesel odors that may escape from the basement to the upper floors of the building.

Mr. Vaught testified that he had purchased the building in 1995 for \$85,000, and he was not aware of the diesel

contamination until 1998. The sellers had indicated there was a moisture problem in the basement, and they kept a dehumidifier running constantly, as does Mr. Vaught currently. After he purchased the building, he hoped to solve the excessive water problem in the dirt portion of the basement by installing a leach liner and tile system. After he began digging the trench, he noticed an increasing stench of diesel fuel as he dug from south to north, thus discovering the problem of the diesel contamination.

Mr. Vaught explained that, although he is not a hydrologist or an engineer, he has learned about some of the properties of diesel fuel since he first discovered the contamination. He stated that *"diesel follows in the ground...and will take the course of least resistance...it will follow the sewer line, because that soil is broken up inside."* Mr. Vaught presented another photograph, which depicts a set of doors on the north side of the basement, closer to the rail yard. Behind the doors there is a concrete block wall, visible in the photograph. He explained that *"at one time, these doors went somewhere. Years ago, Havre was undermined by a bunch of steam tunnels that have been, through the years, filled in; and there are no records, basically. There's some records, but limited. And so, what this diesel did is migrated through this whole*

*block on First Street. It took this course of least resistance so it's traveling in disturbed soils that surfaced...In the early '90's, there was a building to the north of my building that had a basement. That building has since been torn down, that basement filled in. And so the soil, to get to my building, one of the ways it got there is migrated through that disturbed soil, migrated to a sewer line that's north of my building and runs parallel with First Street, and that's probably how it came into my building."*

Taxpayer's Exhibit 3 is a copy of a February 22, 1999 letter from Douglas Martin of the Department of Environmental Quality (DEQ) to Dave Smith of the Burlington Northern Santa Fe (BNSF) Railway. The subject of the letter is as follows: "DEQ Request BNSF to Conduct Soil Sampling In Buildings with Dirt Floor Basements Along 1st Street Between 3rd Avenue and 4th Avenue for the BNSF Havre Fueling Facility, Havre, Montana." Mr. Vaught asked the Board to take note of paragraph one of the letter, in which it states: "DEQ visited the Second Chance Store, at 309 1st Street on February 16, 1999, and observed diesel contaminated soil within one foot of the surface."

Taxpayer's Exhibit 4 is a copy of a June 1, 1999 letter from Douglas Martin of the DEQ to Wayne Vaught and Noni

Baker. The subject of this letter is "Indoor Air Sampling Results, Second Chance Store, Havre, Montana." Mr. Vaught requested that the Board take note of the following sentence from paragraph three of the letter: "The soil concentrations do exceed the soil cleanup guidelines used by the underground storage tank program..."

Taxpayer's Exhibit 5 is an undated letter from Kim Cripps, Broker Associate, Flynn Realty in Havre, which, in pertinent part, reads as follows:

To Whom It May Concern.

I was asked to give an opinion of value on a property when it is impacted by environmental issues such as diesel spills, chemical spills, and underground storage tanks. The owners of Second Chance are such a property. The cost and responsibility of clean up can be born (sic) by the owner or the purchaser and can be very costly and there is never a guarantee the problem is fixed. This impacts how the property is to be financed and sold for future use. In most cases the owner is limited to contract for deed. This limits any SBA- VA or Government guaranteed loans and there are very few buyers who have cash or are willing to take on an environmental risk.

Since the property is limited to resale possibilities this will reduce the value of a building no matter what condition it is in. Financing makes a great impact on the interest rate and terms available and the price a person will pay for a certain property.

This is an opinion from a Realtor standpoint and I have been a Realtor for the past 16 years at Flynn Realty Inc.

Mr. Vaught requested that the Board give particular attention to the following statement from the preceding letter: "Since the property is limited to resale possibilities this will reduce the value of a building no matter what condition it is in."

Taxpayer's Exhibit 6 is a copy of an August 19, 1999 letter from Byron Ophus, Senior Vice President at the First



Security Bank of Havre, to James Vaught, which reads, in pertinent part:

RE: Real Estate with Environmental Concerns

With Commercial Real Estate financing FIRST SECURITY BANK OF HAVRE requires environmental assessments to be conducted. If there is any evidence of environmental contamination the bank would require certification from the State that no further clean up is required. Our bank would be unwilling to proceed with any financing without State certification.

Mr. Vaught explained that the "state certification" mentioned in the letter would be *"a letter from the DEQ telling myself, the property owner, that I no longer need any remediation efforts on my building. The state has told me they will not give me that letter of certification."*

Taxpayer's Exhibit 7 was prepared by Mr. Vaught to show the square footage of his building and how it is utilized. This exhibit is reproduced as follows:

BUILDING @ 309 First Street, Havre, Montana

DIMENSIONS: 30 ft. X 70 ft. = 2100 sq. ft. / floor

BASEMENT: Diesel Storage

FIRST FLOOR: Retail

SECOND FLOOR: Combination of Residential (sic) and Commerical (sic)

A. PERSONAL: Bedroom + Closet 320 sq. ft.

Bath 58.5 sq. ft.

Total 378.5 sq. ft.

B. PERSONAL/BUSINESS: Living Room/Consulting 408 sq. ft.

Spare Bedroom/Storage 155.25 sq. ft.

Office 78.0 sq. ft.

Hall 110.0 sq. ft.

Total .....751.25 sq. ft.

C. BUSINESS ONLY Total .....970.25 sq. ft.

RECAPITULATION SECOND FLOOR:

A. PERSONAL	378.5 sq. ft.
B. PERSONAL/BUSINESS	751.25 sq. ft.
C. BUSINESS ONLY	970.25 sq. ft.
Total.....	2100 sq. ft.

Mr. Vaught explained that the purpose of this exhibit is to show *"what the building is used for with regard to square footage."* He stated that the building is 30 feet by 70 feet, or 2,100 square feet per floor. The basement is used for *"diesel storage,"* the first floor is a retail business, and the second or top floor is a combination of residential and commercial use. He testified that he has split up the second floor into three groupings: strictly personal, personal/business, and business only. Mr. Vaught said that he is offering this information because the DOR had stated that 1,554 square feet of the second floor was being used as residential space.

Mr. Vaught testified that, following his discovery of the diesel contamination in 1998, he had contacted BNSF Railway, and negotiations are continuing although it has never admitted responsibility for the contamination. BNSF told him it would concrete his basement, but he stated that *"the railroad could come in here and pour a whole new slab in the bottom of the store, seal me off from this, but the building would still be polluted... Even if they came in and*

*they tore the building down, dug out the dirt, replaced it with clean dirt and built me a new building, the pollution's still going to be there... So there's basically no way to solve the problem."*

Mr. Vaught hopes to work out a settlement with BNSF, and *"try to get this sealed up, and continue to live there and continue to do my business there... If I could get this covered up and concreted in, and I still have a viable business and I have a home, and our business is improving; we work very hard... I'm not ready to retire..."*

Mr. Vaught explained that he had requested a zero value for his property because he had purchased the building for investment and, *"according to my one exhibit, I can't even sell the building, so, from an investment point of view, it's worth zero."* Another reason he had purchased the property, he testified, was for a home and *"my home is contaminated. I can't afford to go in and pour all this concrete. My home is contaminated with a carcinogenic product."*

#### **DOR'S CONTENTIONS**

DOR Exhibit A is a four-page document. Page one is a color photograph of the property that shows the façade of the Second Chance retail store on the main floor with the

living space above it. Page two of the exhibit is entitled "VAUGHT APPEAL NARRATIVE" and is reprinted as follows:

This is a 1905 retail store. We have it coded as a multiple occupancy retail store, due to the fact it has the retail (Second Chance) and the apartment (owner occupied). We have graded this building as a Low – which is the lowest grade available.

The basement is values (sic) as an unfinished basement. The physical condition is poor and the functional utility is fair.

The main floor is values (sic) as a retail store. The physical condition and the functional utility are fair.

The upper floor is broken into two parts.

The apartment is valued on 1554 square feet, with one bedroom and one bath. The physical condition and the functional utility are both fair.

The remainder of the upper floor is valued as a retail store. This too has a physical condition and functional utility as fair

On October 19, 1999 this property was reviewed.

The only problem the owner had was the presence of diesel fuel in the basement. Only half of the basement has a concrete floor. They had a problem with water leaking into the basement so began to install a tile system (leach line). It was at this time that diesel fuel was discovered 6 inches from ground level.

Because of this problem and the cost to cure the physical condition, on all parts of the building, was lowered to poor, which is the lowest physical condition available. This reduced the improvement value from \$27,000 to \$16,900.

The Second Chance Store is still in operation and the owners are still occupying the second floor apartment.

Page three of DOR Exhibit A, entitled "VALUE SUMMARY," is reprinted as follows:

	<u>Original Value</u>	<u>After Adjustment</u>
<b>LAND:</b>	\$12,540	\$12,540
<b>BUILDINGS:</b>	\$27,000	\$16,900
<b>TOTAL:</b>	\$39,540	\$29,440
<b>TAXABLE MARKET:</b>	\$33,665	\$26,790
<b>TIMES TAX RATE:</b>	3.710	3.710
<b>TAXABLE VALUE:</b>	\$1,249	\$994
<b>TIMES MILL LEVY:</b>	522.94	522.94
<b>ESTIMATED TAXES:</b>	\$653	\$520

Page four of DOR Exhibit A is reprinted as follows:

## VAUGHT APPEAL POINTS

1. The grade of the building is at the lowest possible grade of (Low-).
2. The condition of the building was reduced to the lowest possible condition of (Poor).
3. We reduced the building value from \$27,000 to \$16,900.
4. We reduced the taxes from an estimated \$653 to \$520.
5. We believe this is a very reasonable value considering there is an operating Retail Store and an occupied Apartment in the building.

Mr. Hofeldt testified that the DOR had lowered the building grade to the lowest possible grade, a low minus; it had lowered the building condition to poor; and it had reduced the building value, thus reducing the taxes. He stated that *"we felt that since the business is still being run, still a viable business, and the apartments are still being lived in, and that there is a possibility to cure this condition by putting in a concrete slab, that our final values there were very much in line."*

DOR Exhibit B is a four-page exhibit consisting of computer screen print-outs of the subject property record card. The first page of the exhibit relates to the land data, and Mr. Hofeldt explained that the subject lot is 30 feet by 80 feet, and the building is 30 feet by 70 feet. The land, which, at 80 feet in depth, is less than the 140-foot standard depth, is valued at \$550 a front foot with a 76 percent depth factor applied to it. The calculation for determining the \$12,540 land value is as follows: **30 feet**

(width of lot) x \$550 (value per front foot) = \$16,500 x .76 (depth factor) = \$12,540. Mr. Hofeldt further explained that in determining land value, the DOR found very few vacant land sales in downtown although it had many residential sales, and *"some sales in outlying apartment-type areas, and we found that the commercials and the, kind of the fringe areas of this area, hardly went up at all. They went up a little, but not really enough to justify it. So, for this reappraisal cycle, put on in 1997, we left the land values the same as the previous cycle."*

Pages two through four of Exhibit B contains building data, which was explained by Mr. Hofeldt. The subject building was built in 1905, and its effective year is also considered to be 1905. The structure type is identified as retail, multi-occupancy. Following the AB-26 property review, the DOR assigned a grade of low minus to the building. The basement area is identified as an unfinished basement containing 2,100 square feet. Mr. Hofeldt testified that the percent good assigned to the basement is 20 percent, and its depreciated value is \$8,690. The physical condition of the basement, as well as that of the first and second floors, is designated as "one" or "poor." This had been lowered by the DOR during the AB-26 review. The functional utility of the basement, as well as that of the

first and second floors, is designated as a "two" or "fair." Mr. Hofeldt testified that the DOR had not made an attempt to determine the "cost to cure" for the diesel contamination by installing a concrete slab or other means. He said that he could find it in the manual, but to be accurate, an estimate would have to be obtained from a local contractor.

Mr. Hofeldt testified that other taxpayers who had appealed their values because of diesel fuel contamination had gone through AB-26 property reviews, resulting in similar adjustments that were satisfactory to the taxpayers. He does not believe that there are any guidelines addressing environmental contamination in the Montana statutes, administrative rules, or DOR policies and procedures, and proper valuation of contaminated properties must be addressed on a case-by-case basis.

#### **BOARD'S DISCUSSION**

Mr. Vaught convinced the Board of the seriousness of the diesel fuel contamination problem he faces. The smell of the diesel, as evidenced by the jar of fuel floating on water that he presented to the Board, is putrid; potential health hazards exist; and the contamination problem will not be solved within his lifetime, according to his testimony and exhibits. He purchased the building for retail and living space as well as for a future investment, not knowing

of the contamination at the time of purchase. The value of his investment has potentially been decreased, and the desirability of the building for residential space and as a business location has been reduced. The extent of the potential health hazards to persons residing in or working in the building is unknown. Mr. Vaught also mentioned the potential negative effects of the contamination on the historic value of the building, which is located in the original townsite. Despite these contentions, Mr. Vaught testified that his business is going well and that he is enjoying *"the best year yet, so far."* He praised his living quarters within the building, saying they are *"very up-to-date, very modern...all new plumbing and all new wiring, two different heating/air conditioning systems...the old original oak woodwork and banisters are lovely."*

Mr. Vaught has requested a zero value for his land and building, which would indicate that they are tax exempt. There are specific statutes relating to tax exempt property (**§15-6-201, MCA**), but Mr. Vaught's property does not qualify for exemption under these codes. He agrees that property taxes fund police and fire protection, and he would expect the police and fire departments to respond if he called them, although he would want their assistance not for himself but *"to protect my neighbors."* Mr. Vaught contends



that the property has zero value because he couldn't sell it due to the pollution. In response to questioning, he agreed that there is nothing that prohibits him from selling the property, and he could sell it on a contract for deed even if a potential buyer could not obtain financing through a lending institution. If he decided to retain ownership of the building but close his business and/or move his living quarters, he agreed that he could probably find new tenants to either lease or rent the retail space and/or the apartment.

In Taxpayer's Exhibit 5, the letter from Realtor Kim Cripps, Mr. Vaught had emphasized the following sentence: "*Since the property is limited to resale possibilities **this will reduce the value of a building** no matter what condition it is in.*" (Emphasis added) This does not imply a zero value. It is the opinion of this Board that the Department of Revenue has reduced the value of the building, as suggested by Flynn Realty, Inc.

Although neither the DOR nor Mr. Vaught had researched the specific "cost to cure" the diesel fuel pollution in the basement, they agreed that it is possible to do this. Covering the dirt portion of the basement with a concrete slab is one proposed solution. No specific costs were mentioned for this. Mr. Vaught thought that it would cost

about \$400,000 to have the building demolished and rebuilt, but his concern was that the land underneath would still be contaminated. He is continuing to negotiate with the railroad and expects to receive some type of settlement to address the problem.

The Board addressed the health hazard issue that was presented by Mr. Vaught. He referred to the manufacturer's Material Safety Data Sheet as stating that diesel is "carcinogenic," but he did not present this data sheet as an exhibit nor did he give any further details from the data sheet as to the concentrations required for it to be considered carcinogenic. Taxpayer's Exhibit 4, the letter from Douglas Martin, DEQ Project Officer, to Mr. Vaught regarding the results of the air and soil monitoring in his building, states, in pertinent part, "*Comparing the soil results from your basement to DEQ's Draft Risk Based Screening Levels (RBSLs) indicate that concentrations detected in your basement are below the RBSLs. The soil concentrations do exceed the soil cleanup guidelines used by the underground storage tank program; however, these cleanup guidelines are not based on risk to human health or the environment.*" It is difficult for the Board to tell from the information provided precisely what the potential health risk is from the diesel contamination.

Mr. Vaught's Exhibit 6, the letter from the First Security Bank, states that the bank would be unwilling to proceed with any financing without state certification that no further clean up is required. Mr. Vaught testified that the "state certification" would be a letter from the DEQ stating that he no longer needs any remediation efforts on his building, but *"the state has told me they will not give me that letter of certification."* However, he did not present an exhibit, nor did he offer direct testimony from any DEQ official to confirm the statement. From the testimony and evidence presented, it is difficult for the Board to determine exactly what the long-range effects of the pollution may be on the future value of the property.

The Montana statutes direct the DOR as follows: "**§15-8-111 (1)** *All taxable property must be assessed at 100% of its market value except as otherwise provided. (2)(a)* *Market value is the 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 reasonable knowledge of relevant facts.*" Mr. Vaught testified that he purchased the building for \$85,000, and the sellers had planned to list it for \$125,000. At that time, the sellers were unaware of the diesel contamination in the basement. However, the moisture problem in the

basement was known to the sellers and to Mr. Vaught, as they kept a dehumidifier operating constantly and covered the dirt portion of the basement with visqueen. Neither buyer nor sellers were under any compulsion to buy or sell. The Board believes that the DOR has made a good faith effort to reduce the value of the property to compensate for the diesel pollution. The Board does not agree that the property has zero value, as the taxpayer contends.

The Board notes a discrepancy between the 1,554 square feet determined by the DOR to be residential space on the second floor of the subject building, and the square footage determined to be residential according to the taxpayer. Mr. Vaught's Exhibit 7 indicates 378.5 square feet that are "personal" and 751.25 square feet that are "personal/business." The Board would suggest that the DOR reconcile this difference with the taxpayer and make a more accurate distinction between the residential and commercial space in the building.

According to page 3 of DOR Exhibit B, the basement consists of 2,100 square feet with a depreciated value of \$8,690. Mr. Hofeldt agreed that, basically, the basement has no use (Hofeldt testimony, STAB hearing transcript, page 54). It is not even suitable for storage because of the smell of the diesel fuel. Its only functional use is as a

support for the first floor. The DOR has assigned a functional utility of "two" to the basement. The Board will order that this be reduced to "zero."

**CONCLUSIONS OF LAW**

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

2. **§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.

3. **§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.

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 taxpayer is hereby granted in part and denied in part, and the decision of the Hill County Tax Appeal Board is modified.

**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 Hill County by the Assessor of that county at the value of \$12,540 for the land. The DOR's value determination for the improvements, as upheld by the Hill County Tax Appeal Board, shall be reduced by changing the basement's functional utility from "two" to "zero." The appeal of the taxpayer is therefore granted in part and denied in part, and the decision of the Hill County Tax Appeal Board is modified.

Dated this 12<sup>th</sup> day of September, 2000.

BY ORDER OF THE  
STATE TAX APPEAL BOARD

( S E A L )

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GREGORY A. THORNQUIST, Chairman

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JAN BROWN, Member

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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 12th 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:

James W. Vaught  
309 First Street  
Havre, Montana 59501

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

Hill County Appraisal Office  
300 - 4th Street  
Havre, Montana 59501

Giles Majerus  
Hill County Tax Appeal Board  
HC 30, Box 392  
Havre, Montana 59501

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DONNA EUBANK  
Paralegal