

BEFORE THE STATE TAX APPEAL BOARD  
OF THE STATE OF MONTANA

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COLSTRIP PROPERTIES, INC.,	)	
	)	DOCKET NO.: PT-2002-5
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 February 11, 2003, in the City of Billings, 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.

Colstrip Properties, Inc. was not represented at the scheduled hearing. The Department of Revenue (DOR), represented by Appraisers Larry Richards and Rocky Haralson, presented testimony in opposition to the appeal.

The duty of the Board is to determine the market value of the Taxpayer's 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.*

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 of the DOR, the market value of the property is \$24,300 for the land and \$156,500 for the improvements. The decision of the Rosebud County Tax Appeal Board shall be affirmed.

#### FACTUAL BACKGROUND

1. Due, proper and sufficient notice was given of this matter, the hearing, and of the time and place of the hearing. The hearing notice was sent to the respective parties on January 17, 2003. The Board received notification from the DOR on January 17, 2003 acknowledging the hearing. The Taxpayer failed to return the hearing acknowledgement form to the Board. The

Taxpayer failed to make any contact with the Board. On two occasions prior to the hearing, messages were left on the Taxpayer's answering machine indicating the hearing would proceed as scheduled. All parties were afforded opportunity to present evidence, oral and documentary.

2. The property which is the subject of this appeal is described as:

Lot 2, Block 25A, Colstrip Original<sup>27</sup> Cherry Street: Lot 50, Amended Block 54, Colstrip Original and improvements located thereon. (Assessor Code – 1214)

3. For the current appraisal cycle the DOR appraised the subject at \$24,300 for the land and \$156,500 for the improvements.
4. The Taxpayer appealed the DOR's market values to the Rosebud County Tax Appeal Board (County Board) requesting the values be adjusted to \$12,500 for the land and \$22,500 for the improvements. The Taxpayer cited the following:

I paid \$35,000 as a willing buyer. This property was for sale for 6 years. It was an arms-length transaction.

5. In its September 24, 2002 decision, the County Board denied the Taxpayers request for a lower market value, stating:

Mr. Burnett did not present sufficient documents to support his position.

- a. No buy-sell agreement.
- b. No independent appraisal.
- c. No comparable sales.

6. The Taxpayer then appealed the County Board's decision to this Board on October 4, 2002, stating:

I have a buy sell for \$35,000 but did not present it (sic) as my testimony should have been enough. There are no comparable sales data available in Colstrip.

**STATEMENT OF THE ISSUE**

The issue before the Board is the market value of the subject property as of January 1, 1997, the base appraisal date for the current appraisal cycle.

**TAXPAYER'S CONTENTIONS**

Based on the transcript from the County Board hearing, the taxpayer purchased the property for \$35,000 after it had been on the market for six years. The property is commercial and there is very little demand for commercial property in Colstrip. A small portion of the building is rented to a beauty shop for \$175 per month. That \$175 is the extent of the income that is being produced for the property at the present time.

The property has significant damage, which is a result of the leaking surge ponds in the area.

**DOR'S CONTENTIONS**

The DOR presented the property record card (PRC), Exhibit A, which illustrates the following:

Land Data

Square Feet	Unit Price	Land Value
21,504	\$1.13	<b>\$24,300</b>

Improvement Data

Year Built - 1984	
Structure Type (364) – Motion Picture Theater	
Theater – 2,880 SF	
Retail – 1,728 SF	
Improvement Value from the Cost Approach	<b>\$156,500</b>
<b>Total Property Value</b>	<b>\$180,800</b>

DOR Exhibit B is a copy of a Realty Transfer Certificate (RTC) for the subject property. Summarized, this document illustrates the property sold for \$287,425 on April 7, 1995.

**BOARD DISCUSSION**

At the onset of the hearing, the DOR pointed out to the Board that the market values illustrated on the appeal form are in error. The land value is listed at \$21,627, and should have been \$24,300. The improvement value is listed at \$139,285, and should have been \$156,500.

The County Board denied the Taxpayer's request for a reduced market value based on the testimony and exhibits presented at the hearing before it.

The Taxpayer neglected to notify this Board that neither he nor an agent would attend the scheduled hearing in Billings on Tuesday, February 11, 2003 at 8:15 am. The hearing was held in the office of the Yellowstone County Commissioners as indicated on the hearing notice that was mailed to the

Taxpayer, Colstrip Properties, Inc, on January 17, 2003.

The DOR presented exhibits which supported their value determination. This Board has no supporting evidence or documentation to suggest that the Rosebud County Tax Appeal Board's decision is in error. The appeal of the Taxpayer is therefore denied.

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. **15-6-134. Class four property -- description -- taxable percentage.** (1) Class four property includes: (g) (i) commercial buildings and the parcels of land upon which they are situated.
5. 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



**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 Rosebud County by the local Department of Revenue office at the values of \$24,300 for the land and \$156,500 for the improvements, as determined by the Rosebud County Tax Appeal Board. The appeal of the Taxpayer is therefore denied.

Dated this 13th day of February, 2003.

BY ORDER OF THE  
STATE TAX APPEAL BOARD

( S E A L )

\_\_\_\_\_  
GREGORY A. THORNQUIST, Chairman

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JEREANN NELSON, Member

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MICHAEL J. MULRONEY, 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 13th day of February, 2003, 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:

Colstrip Properties, Inc.  
P.O. Box 1892  
Colstrip, Montana 59323

Rosebud County Appraisal Office  
C/O Richard Sparks  
Rosebud County  
County Courthouse  
Forsyth, Montana 59327

Yellowstone County Appraisal Office  
C/O Larry Richards  
P.O. Box 35013  
Billings, Montana 59107-5013

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

Harlin Steiger  
Rosebud County Tax Appeal Board  
Route 2, Box 59  
Forsyth, Montana 59327

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DONNA EUBANK  
Paralegal