

BEFORE THE STATE TAX APPEAL BOARD  
OF THE STATE OF MONTANA

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JEM, LLC, )  
 ) DOCKET NO.: PT-2003-71  
 )  
 Appellant, ) FACTUAL BACKGROUND,  
 ) CONCLUSIONS OF LAW,  
 -vs- ) ORDER and OPPORTUNITY  
 ) FOR JUDICIAL REVIEW  
 THE DEPARTMENT OF REVENUE )  
 OF THE STATE OF MONTANA, )  
 )  
 Respondent. )  
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The above-entitled appeal was heard on October 27, 2004, in Billings, Montana, in accordance with an order of the State Tax Appeal Board of the State of Montana (Board). The notice of the hearing was duly given as required by law. The taxpayer, Jerry T. Ray, appeared on his behalf. The Department of Revenue (DOR), was represented by Commercial Appraiser Ron Halvorson.

The duty of this Board is to determine the appropriate market value for the property based on a preponderance of the evidence. By statute (15-2-301, MCA) this Board may affirm, reverse or modify any decision rendered by the county tax appeal board. Testimony was taken from both the

taxpayer and the Department of Revenue, and exhibits from both parties were received.

This Board finds and concludes that the taxpayer failed to support the contention that the DOR had erred in its appraisal and, therefore, denies the appeal. The decision of the Yellowstone County Tax Appeal Board is affirmed.

**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 subject property is described as follows:

Lots 6 through 10, Block 3, Central Avenue Addition to the City of Billings, County of Yellowstone, State of Montana, and the commercial improvements located thereon. (Assessor number: A04401).
3. For tax year 2003, the Department of Revenue appraised the subject land at a value of \$92,201 and the subject commercial improvements at a value of \$867,300.
4. The taxpayer filed an appeal with the Yellowstone County Tax Appeal Board on November 12, 2003, seeking a land value of \$99,155 and an improvement value of \$82,245. The following reason was cited for the appeal:

**Increase is not justified due to low rental income.**

5. In its December 20, 2003 decision, the county board placed the total land and improvement value at \$550,000, stating:

**This appeal was very difficult to determine as the Dept. of Revenue's value was \$867,300.00 and the appellant was asking for an adjustment to \$82,245.00. The disparity is absolutely wild. The Board places the land and improvement value at \$550,000.00.**

6. The taxpayer then appealed that decision to this Board on January 18, 2004, citing the following reason for appeal:

**As you can see above the older gentlemen on the local tax appeal board were just guessing as to value. I completed an income and expense reporting form that showed a minus cash flow.**

**TAXPAYER'S CONTENTIONS**

For tax year 2003, the taxpayer is seeking the improvement value for the prior cycle (\$82,245). Mr. Ray contends that the DOR value is based upon 100 percent occupancy for the subject commercial office building at \$9.40 per square foot to reach the assumed \$313,471 in annual rental income. Mr. Ray testified that his actual annual rent is closer to \$140,000 - \$145,000. A \$785,050

increase in value from prior to current appraisal cycle is "ridiculous."

The subject building was built in 1950 and has a very colorful history of foreclosure. When Mr. Ray purchased it in "late 1998 or 1999", it had been vacant for several years and was in terrible condition, including broken floor joists. It had been on the market for approximately two years. It sold at auction for \$95,000 to Mr. Ray.

When Mr. Ray acquired the property, he moved his barbershop office into it. It has an old boiler that was installed in the 1950's and has to be inspected at least once or twice a day. Mr. Ray stated that his tenants in the building are "not the most savory people in the West. You never know if they're gonna pay or if they're not going to pay." The neighborhood is bordered on the east by apartments that are visited by the police an average of three times a day. His more stable tenants include a portion of a clinic, the county WIC (women's, infant's and children welfare program), a hospice, and a visiting nurse's program.

Mr. Ray pays all of the utilities, and janitorial services, and has to be there most of the time to address problems.

Mr. Ray has installed some new floor joists and an air exchange system (at an estimated cost of \$40,000-\$50,000), has painted and replaced some carpet, but basically feels he has "an old junker of a building. We're hobbling along here. We don't have a cash gold mine."

Currently, one-third of the basement area is vacant. The clinic tenant pays a monthly rental of \$10,000 on "lion's share of basement, and almost all of first and second floors." Mr. Ray anticipates that the clinic will build a new building and he will then lose his best tenant.

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

Before the county tax appeal board adjustment, the DOR had placed a total value of \$959,321, or \$28.78 per square foot on the 33,348 square foot, three-level, building, using the cost approach to value. The county tax appeal board reduced the total property value to \$550,000, or \$16.49 per square foot. The DOR did not appeal this decision.

The DOR's income approach would have yielded a value of \$2,138,100. The taxpayer was given the benefit of the lower

value obtained through the cost approach.

DOR Exhibit A contains a copy of the appeal form, the AB 26 property review form, a November 7, 2003 letter from Mr. Halvorson to Mr. Ray stated that no adjustments would be made as a result of the property review process, photographs and property records cards pertinent to the subject property, a diagram of the subject improvements, and a map showing the location of the property.

Mr. Halvorson stated that the DOR has attempted to make an appointment with Mr. Ray prior to viewing the property, per the taxpayer's wishes. Mr. Ray would not make the appointment. DOR Exhibit C contains several notations on the property record card regarding unsuccessful attempts to visit the property with Mr. Ray's permission.

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

The Board finds that the taxpayer failed to satisfactorily demonstrate that the DOR appraisal was erroneous. The DOR has demonstrated that it has performed its appraisal in accordance with statute and administrative rule. The DOR stated that it may have been able to make some adjustment, under the income approach to value, had it been privy to income and expense data pertinent to the

subject property, or had it been able to gain access to the interior of the property. Mr. Ray did not present any evidence, in the form of substantive income or sales data, to substantiate his request for the prior cycle value of \$82,245.

It is noteworthy to point out that the DOR has made attempts to inspect the property and to consider its actual physical condition. The taxpayer has made it clear that he does not wish to have DOR personnel on the premises. By not allowing the DOR to do its job, how does the taxpayer expect this Board to grant a further reduction above and beyond the county tax appeal board adjustment?

The Board will uphold the determination of the Yellowstone County Tax appeal Board. By not appealing that decision to this Board, the DOR demonstrated its acceptance of that value.

#### **CONCLUSION OF LAW**

1. This Board has jurisdiction of the matter under appeal pursuant Section 15-2-301, MCA.
2. §15-8-111 MCA. Assessment - market value standard - exceptions. (1) All taxable property must be assessed





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 Yellowstone County by the local Department of Revenue office at the total property value of \$550,000 that was determined by the Yellowstone County Tax Appeal Board.

Dated this 25th day of February, 2005.

BY ORDER OF THE  
STATE TAX APPEAL BOARD

( S E A L )

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GREGORY A. THORNQUIST, Chairman

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JERE ANN NELSON, Member

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JOE R. ROBERTS, 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 25th day of February, 2005, 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:

Jerry T. Ray  
711 Central Avenue  
Suite 108  
Billings, Montana 59102

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

Ms. Dorothy Thompson  
Property Tax Assessment  
Department of Revenue  
Mitchell Building  
Helena, Montana 59620

Mr. Elwood Hannah, Chairman  
Yellowstone County Tax Appeal Board  
2216 George Street  
Billings, MT. 59102

Yellowstone County Appraisal Office  
175 N. 27<sup>th</sup> St, Suite 1400  
Billings, MT. 59107-5013

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Donna Eubank  
Paralegal