

BEFORE THE STATE TAX APPEAL BOARD
OF THE STATE OF MONTANA

LAKE ELMO)	
LIMITED PARTNERSHIP,)	
)	DOCKET NO.: PT-2001-5
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.)	

The above-entitled appeal was heard on May 31, 2002, 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.

John Capper, agent, and Tom Moss, independent appraiser, presented testimony on behalf of Lake Elmo Limited Partnership (Taxpayer) in support of the appeal. The Department of Revenue (DOR), represented by Chuck Morgan, Appraiser, 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, the Board finds that the appeal of the taxpayer shall be granted in part and denied in part and the decision of the Yellowstone County Tax Appeal Board shall be modified.

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

The Edgewood Apartments located upon Tract 1-B, Certificate of Survey No. 2121 in the City of Billings, Yellowstone County, Montana. Geo Code 03-1033-22-1-01-24-0000, Assessor Code D05299A.

3. For the 2001 tax year the DOR appraised the subject land at \$122,415 and the improvements at \$2,796,785 for a total property value of \$2,919,200.
4. The Taxpayer appealed the DOR's value to the Yellowstone County Tax Appeal Board (County Board) citing the following reasons for the appeal:

The income producing ability of this property won't support the assessed value.

5. The Taxpayer originally requested a value of \$122,415 for the land and \$1,397,585 for the improvements. The requested value was subsequently modified to \$2,000,000 for the entire property based on the Moss Appraisal.
6. In its December 20, 2001 decision, the County Board denied the Taxpayer's appeal, stating:

Based on the evidence in (sic) testimony presented, the Board finds the taxpayer's agent failed to present sufficient evidence to support the position that the Department of Revenue's appraisal of this property is erroneous & therefore, failed to sustain the burden on appeal.

7. The Taxpayer then appealed the County Board's decision to this Board on January 1, 2002, stating, "A narrative appraisal prepared by Thomas C. Moss indicates the market value of this property was \$2,000,000 as of Sept. 21, 2000."
8. The subject property was developed under the Low Income Housing Tax Credit (LIHTC) program as provided under Section 42 of the Internal Revenue Code.

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

The low-income housing tax credit program came about as a result of the need for the federal government to provide affordable housing for low-income individuals and families. It is a voluntary program whereby the investor/developer agrees to restrict rent charged to tenants in return for equally distributed tax credits received over ten years. The tax credits may be used to offset federal income tax liabilities directly by the owner or owners.

Mr. Moss testified that he was contacted in August of 2000 by ARC's Commercial Mortgage out of Nashville, Tennessee

to do an appraisal on the Edgewood Apartments for mortgage lending purposes. He was instructed to perform the appraisal based on market rents, and specifically, to address the issue as to how the tax credit rents compared to market rents. He was also asked to address the issue of how the property tax liability for the subject property compared to like properties in the Billings area.

The project is a 63 unit multifamily property, built in 1997, located on Lake Elmo Road in Billings Montana. It was developed subject to the Section 42 low income tax credit project.

The subject site was purchased in July 1996 for a reported price of \$145,000 (Taxpayer's Exhibit 1, page 12). Mr. Moss arrived at a land value of \$167,000 or \$1.00 per square foot.

Mr. Moss arrived at a cost approach to value of \$2,275,000. Mr. Moss was provided actual developer's cost and also used costs developed by Marshall & Swift Valuation Service.

In the sales comparison approach, Mr. Moss arrived at a value of \$2,062,000 to \$2,079,000.

The value arrived through the income approach is \$1,940,000. Mr. Moss testified he examined both market rate

properties as well as tax credit properties and found that there is, in the current Billings rental market, no marked difference between rents in tax credit units and market rate units. Therefore, his appraisal makes no allowances for the fact that the subject property is a tax credit project.

In the reconciliation of values, Mr. Moss arrived at a final value, effective as of September 21, 2000, of \$2,000,000.

Within the appraisal assignment, Mr. Moss was asked to analyze the property tax liability for the subject versus comparable properties. The following tables and discussion are illustrated on pages 11 and 12 of the Moss appraisal:

Table No. 1: 1999 Taxable Value/Real Estate Liability

Parcel Number			Taxable Value	
D05299A	Land	\$ 92,070	\$ 3,339	\$44,034
	Improvements	\$1,938,268	\$70,301	
	FF&E	\$ 73,676	\$ 2,210	
	Total	\$2,104,014	\$75,850	

Table No. 2: Historical Tax Liability-Subject Property and Tax Comparables

Property/Unit Count Taxable Market Value	1999 Total Tax Per Unit	1998 Total Tax Per Unit	1997 Total Tax Per Unit
Edgewood Apartments/63 Units \$2,030,338/\$32,228 per Unit	\$44,034 \$699/Unit	\$46,821 \$732/Unit	N/A
Brush Meadows Apartments/60 Units \$1,429,584/23,826 per Unit	\$30,000 \$499/Unit	\$31,661 \$528/Unit	\$28,841 \$481/Unit
Rimview Apartments/80 Units \$1,592,821/\$19,910 per Unit	\$35,282 \$441/Unit	\$40,710 \$509/Unit	\$38,033 \$475/Unit
Stoneridge Apartments/32 units \$738,879/\$23,090 per Unit	\$15,615 \$488/Unit	\$17,235 \$539/Unit	\$16,529 \$517/Unit
Rocky Meadows Apartments/96 Units \$3,135,361/\$32,660 per Unit	\$63,002 \$656/Unit	\$67,566 \$704/Unit	\$62,743 \$654/Unit

"... It is also noted, however, that the per unit tax liability for the subject property is substantially greater than it is for any of the other properties noted. Brush Meadows Apartments, a 60-unit tax credit project located next door to the subject property has a per unit tax liability that is \$200 less than that of the subject. And the Rocky Meadows apartments, a 96-unit, "high end" complex in northwest Billings has a tax liability that is \$43 less than that of the subject on a per unit basis. Based on discussions with local tax officials, this discrepancy appears to be at least partially attributable to the assessment model used by the Department of Revenue, which may understate operating expense assumptions for some multifamily properties. An appeal of the subject properties current property tax liability is strongly recommended."

Mr. Moss stated that he has performed a subsequent appraisal of the subject property for a different lender. This appraisal established a market value of \$1,806,000 as of December 2001.

Mr. Moss testified he has not arrived at an opinion of value for 1997, but based on his knowledge of the market during that time period, the subject property would most likely have been worth less. His opinion of the Billings multifamily housing situation in the mid-eighties to mid-nineties was that it was "terrible" and has improved since then.

DOR'S CONTENTIONS

Mr. Morgan stressed that the DOR's mass appraisal system is on a cyclical rotation, e.g., by statute, the DOR appraises all property subject to taxation "every five or six years." This fact precludes it from adjusting its appraisals in response to every economic fluctuation. The common date for

the current appraisal cycle is January 1, 1997. All properties are currently valued as of that date, unless extenuating circumstances, such as natural disaster, occur.

The DOR appraiser for the subject improvements adopted the income approach to value (\$2,919,200). Mr. Morgan's testimony was that, "...if I was the appraiser, I would have selected the cost approach and used that value, because we have those two choices.....I think \$2.9 (million) is somewhat high, really, I would have taken the cost approach..." (State Tax Appeal Board hearing transcript, page 37, lines 6-10, and page 38, lines 13-15).

The DOR's cost approach (DOR Exhibit A) is \$2,620,900. Mr. Morgan noted that the Moss appraisal (page 69, Taxpayer's Exhibit 1) found a cost approach value, adjusted by six percent for trends in local construction costs, of \$2,664,416. Thus, the DOR appraisal and the Moss appraisal were "very close" in their cost estimates.

DOR Exhibit B (two pages) is a copy of building permits issued by the City of Billings regarding the subject improvements. Mr. Morgan presented these documents to demonstrate another favorable comparison between the DOR's cost approach value (\$2,620,900) and the building permit valuation estimate (\$2,829,048).

Mr. Morgan emphasized that the Department, when valuing property from the income approach to value, uses income models for different neighborhoods. He stated that the subject property was not treated any differently than any other and that any differences in appraised value may be due to age differences in the buildings or that the other properties may have been valued using the cost, rather than the income, approach.

BOARD'S DISCUSSION

Section 15-7-111, MCA, and ARM 42.18.106, require that the DOR appraise all property subject to Montana taxation as of a specific base date in order to provide optimum equality among similarly situated taxpayers. The base date for the current appraisal cycle is January 1, 1997. The value requested by the taxpayer is as of September 21, 2000, or three years after the DOR is prescribed to establish value. The Board does note that an independent fee appraisal has merit and the administrative rules suggest how they should be considered.

ARM 42.20.455, CONSIDERATION OF INDEPENDENT APPRAISALS AS AN INDICATION OF MARKET VALUE (1) *When considering any objection to the appraisal of property, the department may consider independent appraisals of the property as evidence of the market value of the property. For an independent appraisal to be*

considered, the taxpayer or his/her agent must meet the following requirements: . . .

The appraisal required in (a) must have a valuation date within six months of the base year valuation date or must be adjusted by the county appraiser or the appraiser who performed and prepared the narrative appraisal to reflect changes in market conditions between the appraisal date and the base year valuation date. (emphasis supplied)

There is nothing in the record to suggest that the value in the Moss appraisal meets follows the dictates of **ARM 42.20.455.**

The Board has been presented a number of values for the subject property as illustrated in the following table:

Taxpayer (Moss Appraisal)	
Date of Value	September 21, 2000
Land Value	\$167,000
Cost Approach	\$2,275,000
Sales Comparison Approach	\$2,062,000 to \$2,079,000
Income Approach	\$1,940,000
Final Value Estimate	\$2,000,000
DOR	
Date of Value	January 1, 1997
Land Value	\$122,415
Cost Approach	\$2,743,315
Income Approach	\$2,919,200
Actual Project Costs (Moss Appraisal)	
Date of Reported Costs	September 1996
Cost	\$2,658,600

The State of Montana has eleven classes of property subject to taxation. Two of these property classes affect the

subject property. **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 and **15-6-138. (Temporary) Class eight property -- description -- taxable percentage.** (1) Class eight property includes: (g) furniture, fixtures, and equipment, except that specifically included in another class, used in commercial establishments as defined in this section.

ARM 42.21.158 Property Reporting Requirements (1) Taxpayers having property in the state of Montana on January 1, 2000, must complete the statement as provided in 15-8-301, MCA.

15-8-301. Statement -- what to contain. (1) The department may require from a person a statement under oath setting forth specifically all the real and personal property owned by, in possession of, or under the control of the person at midnight on January 1; (e) an exact description of all lands, improvements, and personal property; (2) The department shall notify the taxpayer in the statement for reporting personal property owned by a business or used in a business that the statement is for reporting business equipment and other business personal property described in Title 15, chapter 6, part 1. A taxpayer owning exempt business equipment is subject to limited reporting requirements; however, all new businesses

shall report their class eight property so that the department can determine the market value of the property. The department shall by rule develop reporting requirements for business equipment to limit the annual reporting of exempt business equipment to the extent feasible.

On page 11 of Exhibit #1, a market value for the personal property of \$73,676 is indicated. In addition, the property tax statements in the addendum of Exhibit #1 illustrate that personal property taxes are included. Therefore, the record clearly indicates that the taxpayer has met the reporting requirements pursuant to statute and administrative rule.

The DOR testified that value of \$2,919,200 was derived from the income approach. The ability to collect income for this type of income producing property would be adversely affected if certain components of personal property were not present, i.e. refrigerators, stove/ranges, coin operated washer/dryers, etc. The reported construction costs for appliances in the addendum of Exhibit #1 is \$88,900. The DOR neglected to provide as an exhibit the income approach to value for the subject. Therefore, there is nothing to suggest that the value was modified for the presence of personal property. The Board has not been presented sufficient evidence to confirm that the personal property is not being

assessed twice. The personal property reporting form was not provided, therefore, the Board couldn't determine what is being taxed.

The reported project costs of \$2,658,600 are as of September 1996. The DOR, pursuant to statute, completed reappraisal as of December 1996. **15-7-111. Periodic revaluation of certain taxable property.** (1) *The department shall administer and supervise a program for the revaluation of all taxable property within classes three, four, and ten. All other property must be revalued annually. The revaluation of class three, four, and ten property is complete on December 31, 1996.* (emphasis added)

It is the Board's opinion that the actual construction costs for the project do offer an indication of value.

Per the 1996 incurred costs for the project as presented in the addendum of Exhibit #1, the Board will order the value for the improvements to reflect the following:

Total Project Costs:	\$2,658,600
Less: Land Cost:	\$ 145,000
Less: Appliances:	\$ 88,900
Improvement Value:	\$2,424,700

It appears that this appeal arose from Mr. Moss's analysis of values for comparable properties. Even though the requested value for the subject property was not derived from

that analysis, the Court held in *State ex rel. Schoonover v. Stewart*, 89 Mont. 257 (1931), that; in no proceeding is one to be heard who complains of a valuation which, however erroneous it may be, charges him with only a just proportion of the tax. If his own assessment is not out of proportion, as compared with valuations generally on the same roll, it is immaterial that some one neighbor is assessed too little; and another too much."

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. **15-6-138. (Temporary) Class eight property -- description -- taxable percentage.** (1) Class eight property includes:
(g) furniture, fixtures, and equipment, except that specifically included in another class, used in commercial establishments as defined in this section.
6. **ARM 42.21.158 Property Reporting Requirements** (1)
Taxpayers having property in the state of Montana on January 1, 2000, must complete the statement as provided in 15-8-301, MCA.
7. **15-8-301. Statement -- what to contain.** (1) *The department may require from a person a statement under oath setting forth specifically all the real and personal property owned by, in possession of, or under the control of the person at midnight on January 1; (e) an exact description of all lands, improvements, and personal property; (2) The department shall notify the taxpayer in the statement for reporting personal property owned by a business or used in a business that the statement is for reporting business equipment and other business personal property described in Title 15, chapter 6, part 1. A taxpayer owning exempt business equipment is subject to limited reporting requirements; however, all new businesses shall report their class eight property so*

that the department can determine the market value of the property. The department shall by rule develop reporting requirements for business equipment to limit the annual reporting of exempt business equipment to the extent feasible.

8. 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).

9. **ARM 42.20.455**, CONSIDERATION OF INDEPENDENT APPRAISALS AS AN INDICATION OF MARKET VALUE (1) When considering any objection to the appraisal of property, the department may consider independent appraisals of the property as evidence of the market value of the property. For an independent appraisal to be considered, the taxpayer or his/her agent must meet the following requirements: (b) The appraisal required in (a) must have a valuation date within six months of the base year valuation date or must be adjusted by the county appraiser or the appraiser who performed and prepared the narrative appraisal to reflect

changes in market conditions between the appraisal date and the base year valuation date.

10. **State ex rel. Schoonover v. Stewart, 89 Mont. 257 (1931),**
that; in no proceeding is one to be heard who complains of a valuation which, however erroneous it may be, charges him with only a just proportion of the tax. If his own assessment is not out of proportion, as compared with valuations generally on the same roll, it is immaterial that some one neighbor is assessed too little; and another too much."

11. The Board finds that the evidence presented supports its conclusion that the decision of the Yellowstone County Tax Appeal Board be modified.

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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 values of \$122,415 for the land, as determined by the DOR, and \$2,424,700 for the improvements, as determined by this Board, for tax year 2001. The appeal of the taxpayer is therefore granted in part and denied in part and the decision of the Yellowstone County Tax Appeal Board is modified.

DATED this 26th day of June, 2002.

BY ORDER OF THE
STATE TAX APPEAL BOARD

(S E A L)

GREGORY A. THORNQUIST, Chairman

JEREANN NELSON, Member

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 26th day of June, 2002, 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:

Attn: John Capper
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