BEFORE THE STATE TAX APPEAL BOARD
OF THE STATE OF MONTANA

JERRY T. RAY,	)	DOCKET NO.: PT-2003-70
Appellant,	)	FACTUAL BACKGROUND, CONCLUSIONS OF LAW, ORDER and OPPORTUNITY FOR JUDICIAL REVIEW
-vs-	)	
THE DEPARTMENT OF REVENUE OF THE STATE OF MONTANA,	)	
Respondent.	)	

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. Commercial Appraiser Ross Halvorson represented the Department of Revenue (DOR).

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:

> Commercial land and improvements located on Lots 3-5, Block 2, Lillis Park Plaza, $2^{nd.}$ County of Yellowstone, State of Montana (Assessor number: A207140).

3. For tax year 2003, the Department of Revenue appraised the subject land at a value of $228,244 and the subject improvements at a value of $557,656.

4. The taxpayer filed an AB-26 property review form with the DOR August 8, 2003, noting that the DOR's 25% increase in value was excessive.

5. The DOR replied to the AB-26 form on October 30, 2003, denying any reduction in value.

6. The taxpayer filed an appeal with the Yellowstone County Tax Appeal Board on November 12, 2003, requesting a land value of

$208,630, and an improvement value of $381,370. The following reason was cited for the appeal:

> **25% increase is to** (sic) **large as this building is always partially vacant. It is currently 25% vacant. This building needs extensive remodeling to generate current rents.**

7. In its December 20, 2003 decision, the county board denied the taxpayer's appeal, stating:

> **The Department of Revenue is correct in their appraisal. The Board denies this appeal.**

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

> **MDR and County Appeal Board failed to take into account the current 30% vacancy of this older building.**

TAXPAYER'S CONTENTIONS

The values requested by the Taxpayer are those that were on the assessment rolls for the previous appraisal cycle.

Page 1 of Taxpayer Exhibit #1 outlines the reasons the value of the property should be reduced. Summarized, page one illustrates the following:

- October 26, 2004
- Gross Building Area – 17,700 square feet.
- As of March 1st, 2005, 5,300 sq. ft. will be leased. 12,400 sq. ft. vacant.
- Building will be 70% vacant.
- Building needs extensive remodeling.
- An increase in value of 32% is unwarranted
- Value of the property should be less than prior value.

- 6,518 sq. ft. – Old Loonies and Toonies space.
- 1,500 sq. ft. former Pin Cushion.
- 2,850 sq. ft. Former New Life Messengers.
- 1,500 sq. ft. Montana Styling Company (February 2005)
- **12,368 sq. ft VACANT 70%**

- 17,700 sq. ft. Total Leaseable Area
- -12,368 sq. ft. 70% Vacant
- **5,332 sq. ft. Leased 30%**

Pages 2-5, Exhibit #1, are notices of intent to vacate submitted by the tenants:

- Loonies & Toonies – vacate on December 31, 2003
- Montana Styling Company – vacate on February 28, 20005
- Pin Cushion – vacate on August 30, 2004
- New Life Messengers – vacate September 30, 2004

Page 6, Exhibit #1, is a copy of the DOR income approach. Mr. Ray made the notation that the property has never experienced a 10 vacancy factor. The typical vacancy rate for this property ranges from 25% to 40%.

Page 11, Exhibit #1, is a copy of the 2003 assessment notice. Summarized, this exhibit illustrates the following:

	2002 Market Value	2003 Market Value
Land	$208,630	$228,244
Improvements	$381,370	$557,656
Total Value	$590,000	$785,900

Page 12, Exhibit #1 is the taxpayer's listing of income and expenses for the property. At the present, Mr. Ray shows the property operating at a loss.

Mr. Ray testified that the $8.00 SF market rent established by the DOR for retail space of this type is reasonable, but this property requires a new roof in order to command $8.00 SF.

DOR'S CONTENTIONS

DOR Exhibit A, Page 6 is the property record card (PRC) for the subject property. Summarized, the PRC illustrates the following:

Land		
45,560 Sq. Ft.	@ $2.50 Sq. Ft.	$228,244
Improvements		
Year Built:	1985	
Effective Age:	1985	
Quality:	Average	
Size:	60 X 295 = 17,700 Sq. Ft.	
Physical Condition:	Average	
Functional Utility:	Average	
Percent Good:	64% (Depreciation - 36%)	
Other Improvements		
Canopy	Asphalt Paving	Pole Lights
Concrete Paving	Flag Pole	Parking Bumper
Summary of Values		
Land:	$228,244	
Improvements:	$557,656	
Total:	$785,900	

Method of Appraisal: Income Approach

Page 10, of Exhibit A, is a comparison, on a price per square foot basis, of twenty-nine multi-tenant retail spaces along Grand Avenue. The values range from a low of $29.86 SF to a high of $55.15 SF. The subject is valued at $44.40 SF. Pages 11 and 12 are similar comparisons.

Pages 2 and 3 of Exhibit B is the computer-assisted land-pricing model (CALP) for neighborhood 800C, in which the subject property is located. Based on sales, the model determined a value of $2.55 SF for the subject lot.

Page 4 of Exhibit B lists sales of twelve retail properties. Summarized, this exhibit illustrates the following:

Sale #	Sale Date	Sale $	Quality Grade	Total SF	Net Operating Income	Overall Capitalization Rate	Sale $ / SF
1	7/15/99	$450,000	Average	8,120	$39,301	8.7%	$55.42
2	4/30/99	$2,510,592	Good	20,320	$98,349	3.9%	$123.55
3	8/17/99	$2,820,700	Good	20,320	$98,349	3.5%	$138.81
4	7/28/99	$60,225	Fair	1,812	$8,770	14.6%	$33.24
5	4/24/00	$150,000	Average	5,320	$25,749	17.2%	$28.20
6	2/5/01	$205,000	Average	4,800	$23,232	11.3%	$42.71
7	11/1/99	$321,800	Average	7,000	$33,880	10.5%	$45.97
8	10/25/01	$200,000	Fair	6,902	$33,406	16.7%	$28.98
9	5/31/00	$285,180	Average	4,800	$23,232	8.1%	$59.41
10	1/15/99	$315,000	Average	7,350	$35,574	11.3%	$42.86
11	12/26/01	$427,500	Average	12,720	$24,345	5.7%	$33.61
12	11/1/99	$315,000	Average	9,216	$44,605	14.2%	$34.18

Page 7 of Exhibit B is the income and expense data that the DOR collected for retail space. This is the information that was considered when developing the income approach that established the value for the subject property. There are forty-eight properties listed.

Page 9 of Exhibit B is the income and expense reporting form that was submitted by the taxpayer for the subject property.

Page 11 of Exhibit B is the actual income approach the DOR developed to determine the market value of the subject property.

Summarized, this exhibit illustrates the following:

Gross Leaseable (SF)		17,700
Rent per SF	X	$8.00
Potential Gross Income (PGI)	=	141,600
Percent Occupancy	X	90%
Effective Gross Income (EGI)	=	127,400
Less: Expenses	-	(35,400)
Less: Management (5%)	-	(6,372)
Net Operating Income (NOI)	=	85,668
Income Capitalization		
Equity Ratio		9.1%
Effective Tax Rate		1.8%
Total Capitalization Rate (OAR)		10.9%
Total Property Value (NOI / OAR)		
$85,668/ .109	=	785,900

(Expenses are estimated to be $2.00 per SF of rentable area - $2.00 X 17,700)

Exhibit C is the appraiser's field notes for the subject property. Mr. Halverson's notes include:

- 4-11-02 Building is 100% occupied at this review.
- 10-27-03 AB-26 exterior review. No access allowed. Unable to substantiate need for vacancy adj. See note 4-11-02. West unit is in process of remodel and appears that it will be occupied soon.

BOARD DISCUSSION

The DOR valued this property by means of the income approach to value. The taxpayer has recognized this as being an appropriate method of determining market value. The discrepancies rest with the numbers used by the DOR and what the taxpayer asserts to be the appropriate figures. The Board will address each category of the income approach in the following discussion.

The first step is an appropriate market rent. The DOR applied a market rent of $8.00 SF. Mr. Ray testified that, in order to make this property more competitive with competing properties, and achieve an $8.00 SF rent, the roof would need to be updated to a more current design. Mr. Ray did testify that one of the tenants currently occupying the property pays well over $8.00 SF. Mr. Ray did not provide any support for a market rent of anything less than the DOR’s $8.00 SF. The DOR calculated the potential gross income to be:

Gross Leasable Area (GLA) (SF)		17,700
Market Rent	X	$8.00
Potential Gross Income (PGI)		$141,600

The second step is applying a vacancy rate. At the time of this hearing, the taxpayer indicated that the subject was experiencing significant vacancy, approximately 70%. The Board notes that a multi-tenant property as this will experience various levels of vacancy throughout the year. What an appraiser attempts to recognize is what does the market suggest as an appropriate vacancy rate. In this case, the DOR applied a 10% vacancy factor. A property of this type will always be susceptible to periodic vacancies, through tenant turnover, remodeling, etc. There is nothing in the record to suggest that the DOR’s 10% vacancy rate is not applicable for this property.

Gross Leasable Area (GLA) (SF)		17,700
Market Rent	X	$8.00
Potential Gross Income (PGI)		$141,600
Less: Vacancy (10%)		($14,160)
Effective Gross Income (EGI)		$127,440

The third step is deducting expenses. The DOR has determined that the appropriate expenses for the property including management is $41,772 or 33% of the EGI:

			% EGI	$/SF
Gross Leasable Area (GLA) (SF)		17,700		
Market Rent	X	$8.00		
Potential Gross Income (PGI)		$141,600		
Less: Vacancy (10%)		($14,160)		
Effective Gross Income (EGI)		$127,440		
Less: Expenses ($2.00 X GLA)		($35,400)	28%	$2.00
Less: Management (5% of EGI)		($6,372)	5%	$0.36
Net Operating Income (NOI)		$85,668		

The taxpayer provided the DOR with income and expense figures for the subject property (Exh. B, Pg. 9). Excluding property taxes, the reported expenses represent approximately 35% of the EGI. Property taxes are a recognized expense, but for ad valorem purposes are captured in the capitalization rate. There has been nothing presented to suggest that the DOR expenses are not representative of the market for property of this type.

The final step is to capitalize the net operating income. The DOR determined a total capitalization rate of 10.9%. 1.8% of this rate represents the effective tax rate. It appears as though the DOR has developed its capitalization rate based the sales listed on

Exhibit B, page 4. The capitalization rates illustrated have an extremely wide range, 3.5% to 17.2%. The Board has little confidence in the DOR's capitalization rate based upon this data, but was not presented any other supporting documentation from the taxpayer.

DOR Exhibit B, Page 4 lists twelve sales. On a price per unit basis, the DOR's value is deemed reasonable.

Sale #	Sale Date	Sale $	Quality Grade	Total SF	Sale $ / SF
1	7/15/1999	$450,000	Average	8,120	$55.42
2	4/30/99	$2,510,592	Good	20,320	$123.55
3	8/17/99	$2,820,700	Good	20,320	$138.81
4	7/28/99	$60,225	Fair	1,812	$33.24
5	4/24/00	$150,000	Average	5,320	$28.20
6	2/5/01	$205,000	Average	4,800	$42.71
7	11/1/99	$321,800	Average	7,000	$45.97
8	10/25/01	$200,000	Fair	6,902	$28.98
9	5/31/00	$285,180	Average	4,800	$59.41
10	1/15/99	$315,000	Average	7,350	$42.86
11	12/26/01	$427,500	Average	12,720	$33.61
12	11/1/99	$315,000	Average	9,216	$34.18
Subject		Market Value	Quality Grade	Total SF	$ / SF
		$785,900	Average	17,700	$44.40

The taxpayer testified during the series of his appeals that he is a developer and real estate agent. He also testified that the local commercial realtors, which he is, meet on a monthly basis to discuss what is available for rent, and what has sold. He has access to the appropriate market data that would assist this Board in rendering an opinion of value for this property, but neglected to present any supporting documentation. This Board must weigh the evidence it has been presented and make a decision based upon this evidence. In this case, the Board is compelled to uphold the DOR's determination of value.

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. How does the taxpayer expect the DOR to take into account the property's actual condition and physical characteristics if access is denied? In addition, it's difficult for this Board to grant a reduction in value if the taxpayer prohibits the DOR from properly doing its job.

CONCLUSION OF LAW

1. This Board has jurisdiction over 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 at 100% of its market value except as otherwise provided.
3. The appeal of the taxpayer is denied and the decision of the Yellowstone County Tax Appeal Board is affirmed.

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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 a land value of $228,244 and an improvement value of $557,656.

Dated this 25th day of February, 2005.

BY ORDER OF THE
STATE TAX APPEAL BOARD

(S E A L)

____
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
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Billings, Montana 59102

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Ms. Dorothy Thompson
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Mr. Elwood Hannah, Chairman
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Donna Eubank
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