BEFORE THE STATE TAX APPEAL BOARD

OF THE STATE OF MONTANA

MARQ-IT INVESTMENTS, LLC,	)	
	)	DOCKET NO.: PT-2002-7
Appellant,	)	
	)	
-vs-	)	FACTUAL BACKGROUND,
	)	CONCLUSIONS OF LAW,
THE DEPARTMENT OF REVENUE	)	ORDER and OPPORTUNITY
OF THE STATE OF MONTANA,	)	FOR JUDICIAL REVIEW
	)	
Respondent.	)	

The above-entitled appeal was heard on December 13, 2002, in the City of Forsyth, 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.

Craig Marquis, Marq-It Investment, LLC (PT-2002-7) (Taxpayer) presented testimony in support of the appeal. Ted Stimac, 4-Bears, LLC, (PT-2002-6) and Bruce Miller, High Plains Property, LLC (PT-2002-8), provided additional testimony and exhibits pursuant to this appeal. The Department of Revenue (DOR), represented by Appraisers Larry Richards and Richard Sparks, 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 market value of the property is adjusted to $325,554. The decision of the Rosebud 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:

Cherry Street & Ash Street Apartments, at:

27 Cherry Street: Lot 50, Amended Block 54, Colstrip Townsite.
15 Ash Street: Lot 18, Amended plat Block 1, Colstrip Townsite.
18 Ash Street: Lot 18, Amended plat Block 1, Colstrip Townsite.
29 Ash Street: Lot 18, Amended plat Block 1, Colstrip Townsite.
30 Ash Street: Lot 18, Amended plat Block 1, Colstrip Townsite.
45 Ash Street: Lot 18, Amended plat Block 1, Colstrip Townsite.
46 Ash Street: Lot 18, Amended plat Block 1, Colstrip Townsite.

3. For the current appraisal cycle the DOR originally appraised the subject as follows:

	Land	Improvements	Total
27 Cherry Street	$41,493	$162,600	$204,093
15 Ash Street	$19,660	$96,800	$116,460
18 Ash Street	$17,793	$96,800	$114,593
29 Ash Street	$16,499	$96,800	$113,299
30 Ash Street	$16,470	$96,800	$113,270
45 Ash Street	$17,429	$96,800	$114,229
46 Ash Street	$17,674	$96,800	$114,474
Total	**$147,018**	**$743,400**	**$890,418**

4. The DOR modified the values for the improvements as a result of an AB-26 Property Review Form filed by the Taxpayer. Those adjusted values reflect the following:

	Land	Improvements	Total
27 Cherry Street	$41,493	$130,500	$171,993
15 Ash Street	$19,660	$77,300	$96,960
18 Ash Street	$17,793	$77,300	$95,093
29 Ash Street	$16,499	$77,300	$93,799
30 Ash Street	$16,470	$77,300	$93,770
45 Ash Street	$17,429	$77,300	$94,729
46 Ash Street	$17,674	$77,300	$94,974
Total	**$147,018**	**$594,300**	**$741,318**

5. The Taxpayer appealed the DOR's AB-26 decision to the Rosebud County Tax Appeal Board (County Board) requesting the values be adjusted to $17,249.83 for the land and $208,268.65 for the improvements. The Taxpayer cited the following:

> *County value far exceeds the sale price or appraised value by Earl Howe.*

6. In its September 24, 2002 decision, the County Board modified the DOR's values. The land value remained at $147,018, but the improvement value was reduced to $208,268.65, for a total property value of $355.286.65. Summarized the County Board stated the following:

> *2. The land is a long term investment and that we, as a board, cannot tell what long term economics of the area will be.*
> *3. The Department of Revenue used the cost less depreciation for the improvement valuation. They did not have an income approach or comparable sales.*
> *4. Appellants did show evidence of poor income because of low occupancy and high maintenance of the buildings that are in poor repair.*

7. The Taxpayer then appealed the County Board's decision to this Board on October 18, 2002, stating:

> *The County Tax Appeal Board agreed on the price I payed (sic) for the buildings but they still have the land over 8 times what I payed (sic) for it. for (sic) this reason I'm appealing their decision on the land value.*

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 Taxpayer purchased the subject property from PPL, Montana, LLC. The buy/sell agreement (Exhibit 1) indicates a purchase price of $261,454. The agreement also shows a closing date of February 1, 2002.

The Taxpayer’s lender, First Interstate Bank, retained Appraiser Earl L. Howe to conduct a real estate appraisal (Howe Appraisal) on the subject property for mortgage purposes. The Howe Appraisal, Exhibit 2, determined a value of $315,000 as of January 14, 2002. Summarized, the Howe Appraisal indicates the following values for the property:

Cost Approach	
Total improvement replacement cost	$1,613,632
Garages	$122,288
Landscaping	$67,627
Total replacement cost	$1,803,547
Total Depreciation 83%	($1,496,944)
Depreciated value	$306,603
Land value	$17,245
Cost Approach Value	**$323,848**

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Income Approach	
Potential Gross Income:	
4-2 bedroom units @ $360 per unit X 12	$17,280
4-3 bedroom units @ $410 per unit X 12	$19,680
12-2 bedroom units @ $360 per unit X 12	$51,840
12-3 bedroom units @ $410 per unit X 12	$59,040
Potential Gross Income:	$147,840
Less: Gross Income less vacancy & credit loss - 20%	$29,568
Gross Income	$118,272
Less: Expenses	
Taxes	$7,920
Insurance	$4,952
Management 6% of PGI	$7,096
Accounting/legal	$4,500
Repairs, maintenance & replacement @ $500 per unit	$16,000
Utilities, water, sewer & electric	$32,715
Total expenses	$73,183
Net operating income	$45,089
Capitalization Rate - 15%	
Income Approach Value (NOI/Cap Rate)	$300,593

Market Approach	
32,592 S.F. (GLA) X $8.30	$270,514
32 garages @ $1000/each =	$32,000
Site 3.449 acres @ $5,000/acre	$17,245
Total value Market Approach	**$319,759**

It was testified that the seller, PP&L Montana, LLC, was motivated, inasmuch as PP&L Montana, LLC was pursuing to relinquish their interests in property management and focus their attention on power generation. It is also the position of the Taxpayer that PP&L Montana, LLC, was not forced to sell the property.

The property was listed for sale with Alan Lees Realty of Billings, Montana and was on the market for one day. The Taxpayer made an offer and the seller accepted.

DOR'S CONTENTIONS

The DOR's land value for the subject property was established from sales that occurred prior to 1997. Board Exhibit #1 is the Computer Assisted Land Pricing (CALP) model used to value the neighborhood for which the subject is located. Summarized the exhibit illustrates the following:

Neighborhood 14	
Appraisal Date	1-Jan-96
Base Lot Size (SF)	12,000
Base Rate Per Square Foot	$1.64
Residual Rate Per Square Foot	$1.26

Land Sales	Sale Price	Lot Size (SF)	$/SF	Land Sales	Sale Price	Lot Size (SF)	$/SF
1	$20,000	141,930	$0.14	16	$10,868	9,935	$1.09
2	$12,800	11,875	$1.08	17	$10,862	9,665	$1.12
3	$11,400	9,044	$1.26	18	$10,862	9,665	$1.12
4	$11,000	9,080	$1.21	19	$10,862	9,665	$1.12
5	$12,200	9,115	$1.34	20	$10,800	9,600	$1.13
6	$10,000	9,212	$1.09	21	$12,000	10,254	$1.17
7	$11,272	9,264	$1.22	22	$12,114	10,254	$1.18
8	$11,090	9,011	$1.23	23	$12,500	10,351	$1.21
9	$11,257	13,922	$0.81	24	$13,215	12,283	$1.08
10	$11,350	9,117	$1.24	25	$11,600	10,800	$1.07
11	$11,000	9,490	$1.16	26	$11,350	10,565	$1.07
12	$9,000	9,490	$0.95	27	$12,142	11,711	$1.04
13	$10,582	10,340	$1.02	28	$10,834	11,000	$0.98
14	$10,577	9,831	$1.08	29	$12,858	11,951	$1.08
15	$9,683	9,000	$1.08	30	$12,724	11,951	$1.06

The DOR's records consist of seven separate lots that range in size from 16,979 square feet to 42,776 square feet. The DOR values for each lot are as follows:

Lot	Value	Size	$SF
27 Cherry Street	$41,493	42,776	$0.97
15 Ash Street	$19,660	20,268	$0.97
18 Ash Street	$17,793	18,343	$0.97
29 Ash Street	$16,499	17,009	$0.97
30 Ash Street	$16,470	16,979	$0.97
45 Ash Street	$17,429	17,968	$0.97
46 Ash Street	$17,674	18,221	$0.97
	$147,018	151,564	$0.97

It is the opinion of the DOR that the sales illustrated on the CALP model support the final determination of value for each of the individual lots and therefore support a total market value of $147,018.

BOARD DISCUSSION

The market values that have been the subject to the appeal as illustrated on the appeal form are:

	DOR	Taxpayer	County Board
Land Value	$147,018	$17,249.83	$147,018
Improvement Value	$594,300	$208,268.65	$208,268.65
Total Value	$741,318	$225,518.48	$355,286.65

It is unclear to this Board has to how the County Board arrived at a value of $208,268.65 for the improvements, other than it was the value requested by the Taxpayer.

The Taxpayer appealed the County Board's decision because the Board's determination of land value of $383,745 exceeded the value of $36,600 as determined in the Howe Appraisal.

It is interesting to note that what the Taxpayer has requested for a total value is less than what was paid for the property and what has been established in the Howe Appraisal.

Section 15-7-111, MCA, and **ARM 42.18.106**, requires 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 DOR testified that the market conditions in Colstrip have not changed significantly from 1996 to the present. That would suggest the market value for the subject property would be relatively the same today as it was in 1996. The previous owner of the subject property was the Montana Power Company (MPC) and there is nothing in the record to indicate that MPC ever questioned the DOR's values.

It was testified that the seller was motivated to sell and the property was only on the market for one day. It was also testified from the buyers that they received a "good deal." An independent fee appraisal was conducted on the property to assist the Taxpayer in obtaining financing. As previously, noted the final conclusion of value in the Howe Appraisal was $315,000, with a date of value of January 14, 2002. The value established in the Howe Appraisal exceeded the purchase price by $53,546. This in itself would support the transaction as being a good deal. The Taxpayer has not requested this Board to set the value at what was paid for the property, but rather a value that is less than the purchase price and the value as determined in the Howe Appraisal.

The administrative rules allow for consideration of a sales price as an indication of value as well as the use of an independent fee appraisal. ***ARM 42.20.454*** *CONSIDERATION OF SALES PRICE AS AN INDICATION OF MARKET VALUE* and ***ARM 42.20.455***, *CONSIDERATION OF INDEPENDENT APPRAISALS AS AN INDICATION OF MARKET VALUE.*

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). The DOR testified that the market conditions or economy of Colstrip has not changed from the time the DOR conducted its appraisal in 1996 to the time the taxpayer purchased the property in 2002. Based on the testimony of the Taxpayer, the economy of Colstrip is not a positive one. There have been considerable layoffs at the power facility, which have resulted in higher vacancies in the subject and competing multi-family projects. The DOR does not dispute that Colstrip's economy has struggled over the years.

The appeal before this Board is directed at the value of the land. Per the DOR, the subject property consists of seven individual lots that total 3.479 acres of land. The Howe Appraisal suggests a slightly smaller area of 3.449 acres. The Taxpayer purchased the property as a whole and is operating it as a multi-family project. The DOR's CALP model supports a land value for the individual lots but does not support a total land area of 3.479 acres. The DOR's land value for the smaller lots is also supported by the three sales identified in the Howe Appraisal.

		Howe Appraisal		
Property	Sale Price	Size	$SF	Date of Sale
Sale #1	$30,015	20,010	$1.50	Jun-99
Sale #2	$16,000	9,057	$1.76	Feb-99
Sale #3	$63,000	45,000	$1.40	Jan-95

Within the Howe Appraisal, it states the following with respect to value of the land:

None of the previous sales had similar land qualities as (sic) subject. Most notable difference is the overall size. Subject has a total area of 150,281.61 S.F. or 3.449 acres. The above sales indicated a range of values for the subject site of $1.40/S.F. to a high $1.76/S.F. Sales 1 & 2 were residential and Sale 3 was commercial. Other area sales are indicating undeveloped acreage tracts from $1,000 to $2,000/acre.

With limited market data, justification for a realistic land value is somewhat suspect. An individual Ash Street lot at 15,000 S.F. should have a value of $10,000 but would require a substantial downward adjustment considering the overall size of the total property being appraised.

Subjects 3.449 acre site was concluded at $5,500/acre = $17,245.

The Board agrees that a size adjustment is warranted when comparing a 3.449-acre property with much smaller properties. There is nothing contained within the Howe Appraisal that provides support for the method(s) that were used to arrive at a value of $5,000 per acre, nor was Mr. Howe present at the hearing. It is the opinion of the Board that land value as determined in the Howe Appraisal is unsupported and therefore cannot be relied upon. Just as with the Howe Appraisal, the DOR's determination of value for the land is unsupported for a property that consists of 3.479 acres. The subject property does contain seven separate lots, but it cannot be ignored that the property is being managed and was purchased as a single multi-family facility. Therefore, a size adjustment is warranted when comparing the smaller lot sales to the subjects' 3.479 acres. The DOR provided no support for a land value of $147,018.

It is necessary for the Board to analyze the sale of the property along with the Howe appraisal in arriving at a market value for the property. The value indications are:

Sale Price	$261,454
Howe – Cost Approach	$323,848
Howe – Sales Comparison Approach	$319,759
Income Approach	$300,593
Final Value Conclusion	$315,000

The value indications range from a low of $261,454, the sale price, to a high of $323,848, the cost approach. Because of the seller's motivation, the sale would suggest the lower end of range. It's difficult to give the cost approach any credence because the appraiser applied a depreciation factor of 83% with no support whatsoever. In addition, the cost approach values the land separately and that issue has been previously addressed. Within the sales comparison approach, the Howe Appraisal used one sale to arrive at an indication of value. This sale did contain multi-family dwellings, but also included 132 mobile home spaces on 23.3 acres of land. Because of this additional component, the comparability of this property and the subject must be questioned. Also, this approach uses the appraiser's land value.

The Board has before it three income approaches: the subject, High Plains Property, LLC (PT-2002-8), and 4-Bears, LLC (PT-2002-6). One problem with the Howe Appraisal's income approaches for ad valorem tax purposes is the inclusion of property taxes as an operating expense. The DOR has rules for valuing a property by means of the income approach.

ARM 42.20.108 INCOME APPROACH (3) The department will use generally accepted procedures as outlined by the International Association of Assessing Officers in their text titled "Property Assessment and Appraisal Administration" when determining normal net operating income…

(c) **Items which are not allowable expenses are** depreciation charges, debt service, **property taxes** and business expenses other than those associated with the property being appraised.
(d) An effective tax rate will be included as part of the overall capitalization rate. (emphasis supplied)

According to International Association of Assessing Officers:

The effective tax rate can be developed for any class of property in a jurisdiction by multiplying the appropriate level of assessment by the current tax rate expressed as a decimal or a percentage. The resulting value conclusion is not prejudiced by a predetermined value judgment as it is when taxes are included as an expense item.[1]

The tax rate or taxable percentage for commercial property for tax year 2002 is 3.46% and the mill levy for Colstrip is 213.24. The calculation for the effective tax rate (ETR) is:

Tax Rate	.0346
X Mill Levy (Colstrip)	X .21324
Effective Tax Rate	.007378

The Howe Appraisal applied a capitalization rate of 15% for the subject property. Adding the above effective tax rate to the 15% would suggest an overall capitalization rate for ad valorem tax purposes of 15.74% rounded. Recognizing the income and expenses, with the exception of property taxes, contained in the Howe Appraisal, the value from the income approach would suggest the following:

1 International Association of Assessing Officers., *Property Assessment Valuation,* Chicago, Ill., 1977, p. 242

Income Approach

Potential Gross Income:	
4-2 bedroom units @ $360 per unit X 12	$17,280
4-3 bedroom units @ $410 per unit X 12	$19,680
12-2 bedroom units @ $360 per unit X 12	$51,840
12-3 bedroom units @ $410 per unit X 12	$59,040
Potential Gross Income:	$147,840
Less: Gross Income less vacancy & credit loss - 20%	$29,568
Gross Income	$118,272
Less: Expenses	
Insurance	$4,952
Management 6% of PGI	$8,870
Accounting/legal	$4,500
Repairs, maintenance & replacement @ $500 per unit	$16,000
Utilities, water, sewer & electric	$32,715
Total expenses	$67,037
Net operating income	$51,235
Capitalization Rate - 15%	15.00%
Effective Tax Rate (ETR)	0.738%
Total Capitalization Rate	15.74%
Income Approach Value (NOI/Cap Rate)	$325,554

Pursuant to administrative rules, the DOR has the ability to value property by means of the income approach.

ARM 42.20.107 VALUATION METHODS FOR COMMERCIAL PROPERTIES

(1) When determining the market value of commercial properties, other than industrial properties, department appraisers will consider, if necessary information is available, an income approach valuation.

(3) If the Department is not able to develop an income model with a valid capitalization rate based on the stratified direct market analysis method, the band-of-investment method or collect sound income and expense data, the final value chosen for ad valorem tax purposes will be based on the cost approach or, if appropriate, market approach value. The final valuation is that which most accurately estimates market value.

The DOR testified that it was were unable to collect sufficient income and expense information to properly estimate the value for multi-family property in Rosebud County. Therefore, the DOR defaulted to the cost approach as a means of establishing value. The County Board reduced the value of the improvements from $594,300 to $208,268.65, and the DOR did not appeal that decision. The County Board's improvement value doesn't appear in any of the methods used in the Howe Appraisal. This Board's opinion established a total property value of $325,554 from the income approach. To remain consistent with the opinions, PT-2002-6, 4-Bears, LLC and PT-2002-8, High Plains Properties, LLC, the value for the improvements is $302,514 and the land value is $23,040, for a total value of $325,554.

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. **42.20.107 Valuation Methods For Commercial Properties.**

6. **42.20.108 Income Approach.**

7. **42.20.109 Capitalization Rates.**

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. The Board finds that the evidence presented supports its conclusion that the decision of the Rosebud 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 Rosebud County by the local Department of Revenue office at the values of $23,040 for the land and $302,514 for the improvements, as determined by this Board, for tax year 2002. The appeal of the Taxpayer is therefore granted in part and denied in part and the decision of the Rosebud County Tax Appeal Board is modified.

Dated this 15th day of January, 2003.

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 15th day of January, 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:

Marq-It Investments, LLC
P.O. Box 2378
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
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