

MUELLER BROS, LLLP,*Appellant,*

v.

**STATE OF MONTANA,
DEPARTMENT OF REVENUE,***Respondent.*

CASE №: PT-2020-7

**FINDINGS OF FACT,
CONCLUSIONS OF LAW, ORDER
AND OPPORTUNITY FOR
JUDICIAL REVIEW****STATEMENT OF THE CASE**

This case is an appeal from the Butte-Silver Bow County Tax Appeal Board (BCTAB) decision regarding the taxable value of a bar/multifamily apartment building in Butte. Mr. C.C. Cox appeared on behalf of the taxpaying entity and owner of the building. A hearing was held by BCTAB on December 10, 2019, to review Mueller Bros LLLP. appeal of this property's appraised value for tax years 2019 and 2020. At the conclusion of the hearing the BCTAB made an adjustment to the property value from \$237,031 to \$210,000. BCTAB felt some personal property was included in the purchase price, but the Taxpayer's full amount was without justification. We affirm the BCTAB's determination.

ISSUE TO BE DECIDED

The Taxpayer disputed the decision of the BCTAB. The Taxpayer requests a valuation of \$115,000, with \$110,000 of personal property. The Montana Department of Revenue (DOR) believes the property has been valued correctly at \$237,031 using the cost approach.

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PROPERTY DESCRIPTION

The subject property is known as the Copper King Saloon and is located at 1000 S. Montana Street, in Butte. The property geocode is 01-1197-24-1-20-26-0000, and has a legal description of JH Rowe, S24, T3N, R8W, Block 10, Lot 1, N12.29'LT2. This property is in DOR neighborhood 201.010A. The commercial property comprises 4,500 square feet with the Copper King Saloon on the main floor and three apartments, one on the lower level, and two apartments upstairs.

EXHIBIT LIST

The Board admitted the following exhibits submitted by the Department of Revenue:

Ex. A: 2019 property record cards for 1000 S. Montana Street, including pictures of the exterior of the subject property;

Ex. B: 2020 property record card revised after the BCTAB decision, including pictures of the exterior of the subject property;

Ex. C: Reality transfer Certificate for the subject property and buy/sell agreement for 1000 S. Montana Street.

Ex D: Completed AB-26 form for 1000 S. Montana Street.

Ex. E: AB-26 determination letter, stating an adjustment was made in value from \$287,561 to \$237,031;

Ex F: Completed Commercial Sales Verification Form, signed by John Kinzle; and

Ex G: Appeal to the County Tax Appeal Board form with a value adjustment from \$237,031 to \$210,000, including the BCTAB minutes.

The Taxpayer did not move for the admission of any exhibits in support of his arguments. The Board did consider the entire file forwarded from Butte Silver-Bow County Tax Appeal Board hearing.

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FINDINGS OF FACT

1. The Taxpayer purchased the subject property on April 19, 2019, for \$225,000 and believed it should be valued at \$115,000, with \$110,000 of the purchase price allocated to personal property. *Dept. Ex. C, Dept. Ex. D.* The DOR has appraised the subject property land at \$32,491 and the improvements at \$204,540, for a total of \$237,031. *Dept Ex. B.*
2. Muller Bros. contested the 2019/2020 property appraisal by filing a DOR form AB-26 request for Informal Classification and Appraisal Review on July 11, 2019. The core issue of concern was the Taxpayer's contention that personal property of \$110,000 should have been subtracted from the DOR's estimate of market value. Further, the building needs repair, including the roof and upper floor. The Taxpayer argues, the best indication of market value was the purchase price, which he claims was \$115,000 without the personal property. *Dept. Ex. D.*
3. The DOR sent a Letter of Determination to the Taxpayer on August 23, 2019, reducing the property value. The DOR removed the basement as a livable area and adjusted the market value from \$287,561 to \$237,031. *Dept. Ex. E.* No further reduction was made because the DOR felt the sale was not arms-length, and a reduction for all of personal property was unrealistic. *Id.*
4. The Taxpayer filed an appeal to the Butte-Silver Bow County Tax Appeal Board on September 25, 2019. *Dept. Ex. G.*
5. The BCTAB declined to lower the Taxpayers value. Stating "personal property was included in the purchase price; however, the amount reported by the property owner is inflated and without justification . . . and many of the items reported are fixtures to the real property." *Id.*

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6. The Taxpayer appealed the BCTAB decision with this Board on January 21, 2020 and stated the DOR assessed value of the subject property failed to deduct the personal property from their market value and failed to consider the condition of the building. *MTAB Appeal Form Dkt. 1.*
7. Muller Bros. LLLP was represented at the hearing by C.C. Cox or Curtis Campbell Cox. Mr. Cox swore under oath that he was authorized to represent the Taxpayer. *MTAB Hearing 00:05:01.*
8. The buy/sell agreement for the subject property allocates the purchase price of \$225,000 as: \$5,000 for the land; \$110,000 for the building, including \$25,000 for the structure, \$20,000 for roof coverings, \$20,000 for window coverings, \$25,000 for apartment floor coverings, \$5,000 for public floor coverings, \$5,000 x 5 for heating devices; \$110,000 for personal property, including \$25,000 for main bar, \$40,000 for pool tables, \$10,000 for security system, \$5,000 for the safe, \$5,000 for TVs, \$5,000 for jukebox, \$5,000 for tables and chairs, \$10,000 for ranges, and \$1,000 x 5 for refrigerators.
9. The only evidence presented to the Board of the value of any personal property was in exterior photos taken by the DOR appraiser, a handwritten ledger, and a buy-sell agreement introduced at the BCTAB hearing. *Dept. Ex. C; BCTAB Record Ex. 1.*
10. DOR used the Cost approach to value the subject property. *MTAB Hearing 4:10:00* DOR also calculated the value using the income approach. *Id.* The income approach was not used because it valued the subject property over \$300,000. Further, DOR witness testified it is hard to validate the use of the income approach in multiple-use properties, like the subject property. *Id.*

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11. DOR testified the sale was not an arms-length sale because when the property was purchased it was not on the open market, disqualifying the sale as arm-length according to Mont. Admin R. 42.20.432. *MTAB Hearing 4:21:10*. DOR appraiser John Kentzle testified that after talking with the previous owner the sale was not arm-length because, the property was originally purchased at a distressed sale, the previous owner was tired of running a bar, he disputed the value placed on some of the personal property and the property was not listed on the open market. *Id*

12. DOR attorneys contended that the Taxpayer had not alleged the DOR appraisers violated any industry procedures, policies, or Montana law when valuing the subject property. *MTAB Hearing 4:57:30*. Taxpayer only claimed that the personal property was not properly deducted but did not itemize or provide any proof of the personal property value aside from what was introduced at the BCTAB hearing or by the DOR. *Id*.

PROCEDURAL HISTORY

13. Taxpayer filed several motions before the hearing and during the hearing to bar the DOR from presenting evidence. Taxpayer asserted the DOR did not timely respond to his discovery requests and should be precluded from presenting any evidence or testimony before the Board. *Appellant's Motion for Sanctions, Dkt. 8*. Further, the Taxpayer asserted this delay in producing discovery responses prevented him from "being able to do an analysis of the data in time to participate in the hearing." *Appellant's Motion for Sanctions Updated, Dkt. 12, Appellant's Request to Reconsider Dkt. 18*.

14. DOR attorneys responded to the written and verbal motions and objections, testifying that after an initial scrivener's error in the P.O. Box number, they mailed and FedExed

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information to the correct address provided and had attempted to both email and phone the Taxpayer to confirm his correct address and send a new packet of information.

Respondent's Brief in Opposition to Appellant's Motion for Sanctions, Dkt. 9. The DOR Paralegal on the case testified under oath during the hearing as to her multiple attempts to contact and serve the Taxpayer, without result. The Taxpayer failed to respond to the email or phone contacts, nor was he willing to retrieve the package at the post office. *Id.*

15. The Board denied the Taxpayer motions and found the DOR made good faith efforts to communicate with the Taxpayer and serve the Taxpayer with the requested information. During the hearing, the Taxpayer declined to present any evidence of his own as he stated the DOR had failed to serve him, so he would not be providing them with his information. He relied on the very limited exhibits in the record from the County hearing.
16. To whatever extent the foregoing findings of fact may be construed as conclusions of law, they are incorporated accordingly.

JURISDICTION AND STANDARD OF REVIEW

17. The Taxpayer filed a timely appeal of the BCTAB decision to the MTAB. Therefore, this Board has jurisdiction to hear and decide this matter. Mont. Code Ann. §15-2-301.
18. The Montana Tax Appeal Board is an independent entity not affiliated with the Montana Department of Revenue. Under the authority of Mont. Code Ann. § 15-2-301.
19. This Board hears CTAB appeals de novo. *CHS Inc. v DOR*, 2013 MT 100. "A trial de novo means trying the matter anew, the same as if it had not been heard before and as if no decision had been previously rendered." *McDunn v. Arnold*, 2013 MT 138. As such,

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this matter is reviewed without giving deference to the BCTAB hearing and subsequent decision. *Id.*

CONCLUSIONS OF LAW AND BOARD DISCUSSION

20. To whatever extent the following conclusions of law may be construed as findings of fact, they are incorporated accordingly.
21. “All taxable property must be assessed at 100 percent of its market value except as otherwise provided.” Mont. Code Ann. §15-8-111(1).
22. “Market value is the 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 reasonable knowledge of relevant facts.” Mont. Code Ann. §15-8-111(2)(a).
23. The Department is authorized to use one or more approaches to value residential property, including the comparable sales or market data approach. *Albright v. State*, 281 Mont. 196, 208-09, 933 P.2d 815, 823 (1997).
24. As a general rule, ... the appraisal of the DOR is presumed to be correct and the Taxpayer must overcome this presumption. The Department of Revenue should, on the other hand, bear a burden of providing documented evidence to support its assessed values.” *Carey v. DOR*, 2018 Mont. Tax App. Bd. PT-2018-9; citing *Workman v. The Department of Revenue of the State of Montana*, 1997 WL 37203; citing *Western Airlines, Inc. v. Catherine J. Michunovich, et al*, 149 Mont. 347, 428 P.2d 3 1967.
25. We find the Taxpayer failed to provide any evidence and little credible testimony that the value of the subject property and attached apartment’s contents are worth \$110,000

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that he requested we deduct from his value. The only document in evidence describing the personal property was a handwritten ledger and addendums to a buy-sell agreement.

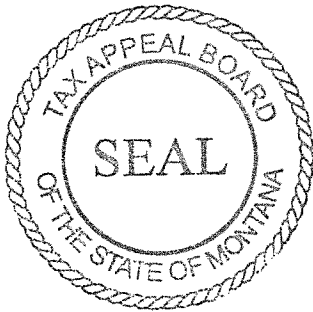
26. Also, we decline to make any reductions for alleged personal property, such as \$40,000 for pool tables or \$10,000 for the security system. No reasonable person would consider this a market value for used personal property. Also, a wired security system is considered attached to the property.
27. Finally, we would note that Mr. Cox, in this appeal and six others heard over a two day period, provided testimony that this board found to be highly incredible, with regard to his denials of having been served documents by the DOR. As an example, he argued that mailings from the Department were addressed to Smythe Family LLP – “not LLLP”—and argued that this error served to invalidate any such communications to him by the DOR. This Board found the DOR to have provided a convincing counter-narrative, that they were continually reaching out to Mr. Cox and making every effort by mail, email and phone to reach him, but that he often refused to respond or engage with them.
28. The Board upholds the Butte-Silver Bow County Tax Appeal Board's decision allowing the Taxpayer a \$27,031 deduction for personal property included in the purchase of the subject property. BCTAB minutes indicate a thoughtful review of what allowances should be made. We decline to second guess the allowances made by the county board and defer to their local knowledge of fair adjustments for the personal property reasonably claimed by the Taxpayer.
29. In this case, it is clear that the Taxpayer did not meet his burden to prove the DOR failed to reasonably establish market value.

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ORDER

- 30. Mueller's Bros LLLP appeal and complaint are denied in part.
- 31. DOR is ordered to set the value of the property at \$210,000 for 2019/2020 tax years.

Ordered November 17, 2020



David L. McAlpin, Chairman
MONTANA TAX APPEAL BOARD

Stephen A. Doherty, Member
MONTANA TAX APPEAL BOARD

Eric Stern, Member
MONTANA TAX APPEAL BOARD

Notice: You are entitled to judicial review of this Order by filing a petition in district court within 60 days of the service of this Order. The Department of Revenue shall promptly notify this Board of any judicial review to facilitate the timely transmission of the record to the reviewing court. MCA §15-2-303(2).

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Certificate of Service

I certify that I caused a true and correct copy of the foregoing Finding of Fact, Conclusions of Law, Order, and Opportunity for Judicial Review to be sent by Email, United States Mail via Print, and Mail Services Bureau of the State of Montana on November 17, 2020 to:


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