

NOV 17 2020

Before The Montana Tax Appeal Board**VIRGINIA APTS. LLLP,***Appellant,*

v.

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

CASE No: PT-2020 Montana Tax Appeal Board

**FINDING 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 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 Virginia Apts. LLLP. appeal for tax years 2019 and 2020. At the conclusion of the hearing the BCTAB adjusted the subject property's value from \$727,600 to \$700,000. BCTAB felt the purchase price and income generated was consistent with DOR's revenue income models but reduced the valuation to account for unattached personal property in the rental apartments and common areas. We affirm the BCTAB's determination.

ISSUE TO BE DECIDED

Whether Mr. Cox is correct that the market value of his property is \$450,228, and not \$700,000 as the county board has found, or \$727,000 as the Montana Department of Revenue (DOR) maintains.

PROPERTY DESCRIPTION

The subject property is known as the Virginia Apartment Building, located at 230 S. Washington Street, in Butte. The property geocode is 01-1197-13-3-81-10-0000, and it is legally described as Butte Townsite, S13, T3N, R8W, Block49, Lot 11A, Plat 185-B. This land

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and building are in DOR neighborhood 201.010A. The property is a multi-family apartment building consisting of 24 efficiency rental units and four one-bedroom rental units, all of which totals 24,232 square feet.

EXHIBIT LIST

The Montana Tax Appeal Board (Board) admitted the following exhibits submitted by the Department of Revenue:

Ex. A: 2019 property record cards for Virginia Apartments;

Ex. B: 2020 property record card for Virginia Apartments;

Ex C: Reality transfer Certificate for the subject property;

Ex D: Virginia Apartments completed AB-26 form, request for informal classification, and appraisal review. AB-26 determination letter, stating the property was not an arms-length transaction and adjusting the property value from \$881,900 to \$727,600;

Ex E: Completed Commercial Sales Verification Form, signed by DOR appraiser John Kinzle;

Ex F: Buy-sell agreement with two addendums for properties located at 216 and 230 S. Washington. Unsigned.

Ex G: Appeal to the County Tax Appeal Board form with determination and BCTAB minutes.

Ex H: Zillow real estate listing for a studio apartment for rent in the subject property, map of the property lines, photos of the subject property, and photos inside one of the units;

Ex I: Seller's estimated development costs, estimated net operating costs, and real estate listing for a comparable property in Butte;

Ex K: Obituary of Eula Myrtle Compton, the former owner of the subject property.

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 May 14, 2019, for \$800,000 and believes it should be valued at \$410,228. *MTAB Hearing 10:02:31*. The DOR appraised the subject property land at \$18,630 and the improvements at \$708,970, for a total of \$727,600. *Dept Ex. G*. The purchase price included an adjoining home that was valued at \$50,000 in the sale documents submitted. It was also appealed, but that dispute was settled under cause number 2020-8, resulting in an effective sale price of the Virginia Building Apartments of \$750,000. *MTAB Hearing 10:04*.
2. Virginia Apartments 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 and a holdback for repairs allowance of \$34,772 should have been subtracted from the DOR estimate of market value. After applying these deductions, Taxpayer argued the real property should be valued at \$410,228. *Dept. Ex. D*.
3. During the AB-26 communication with the DOR the actual rents charged in the building were provided, which allowed the DOR to calculate an income method of valuation of the land and improvements. That income method estimated a market value of \$727,600. *Dept Ex. A*.
4. The DOR sent a Letter of Determination to the Taxpayer on August 23, 2019, with the conclusion that the property value was reduced from \$881,900 to \$727,600. *Id*.
5. The Taxpayer filed an appeal to the Butte-Silver Bow County Tax Appeal Board on September 25, 2019, and a hearing took place on December 10, 2019. *Dept. Ex. G*.

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6. The BCTAB further lowered the property value from \$727,600 to \$700,000. In its decision the BCTAB reasoned that both the purchase price, and the income generated by rents were consistent with the DOR's income models and supported the final DOR assessment. BCTAB made adjustments to account for the values associated with personal property such as stoves and refrigerators in the rental units. Taxpayer had claimed the value of personal property to be removed from valuation should be \$9,000 per apartment or \$225,000 total. These proposed reductions were for floor covering, furnishing, refrigerators, stoves, and décor. Instead the BCTAB reduced the value by \$27,600. *Id.*
7. The Taxpayer next appealed the BCTAB decision with this Board on January 21, 2020, and stated the DOR assessed value of the subject property failed to include the deductions for holdbacks at time of sale totaling \$34,772 for repairs and replacement, nor adequate value reductions for the personal property. *MTAB Appeal Form.*
8. Virginia Apts. 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.*
9. The unsigned buy/sell agreement addendum #1 for the subject property allocates \$34,772 for the seller's repairs after closing. *Dept. Ex. F.*
10. The unsigned buy/sell agreement addendum #2 for the subject property allocates the \$750,000 purchase price as follows: \$15,000 for land; \$35,000 for the structure; \$40,000 for roof coverings; \$50,000 for the boiler; \$75,000 for floor coverings at \$3,000 per unit; \$25,000 for furnishings; \$5,000 for tools and parts; \$25,000 for refrigerators at \$1,000 per unit; \$25,000 for stoves at \$1,000 per unit; \$10,000 for water heater; \$100,000 for heating system; \$25,000 for public area carpet; \$100,000 for elevator;

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\$10,000 for yard accessories and improvements; \$100,000 for windows; \$75,000 for interior décor at \$3,000 per unit; and \$35,000 for the security system. *Dept. Ex. F., MTAB Hearing 9:50:33.*

11. The only evidence presented to the Board of any personal property or its value was in photos taken by the DOR appraiser. *Dept. Ex. H.*
12. Taxpayer testified that one unit in the subject property is reserved for the property manager and does not collect rent on that unit. *MTAB Hearing 10:06:45.*
13. The Taxpayer pays all utilities for Virginia Apartments at an estimated \$2,500 per month. *MTAB Hearing 09:50:23.*
14. After the death of the owner, the subject property was listed for sale and removed from listing three times; the DOR witness testimony suggested it was removed because of other failed sales. *MTAB Hearing 10:52:16.*
15. Taxpayer testified his purchase of the subject property was an arm-length transaction. The property was on the market for nine months, and the estate received at least four other offers. *MTAB Hearing 10:02:26.* The representative for the estate selected a different offer initially, and when the that offer eventually fell through, the estate contacted the Taxpayer to accept his offer. *Id.*
16. DOR testified the sale was not an arms-length sale because the property was purchased from an estate, and according to Mont. Admin R. 42.20.432 the sale cannot be validated. DOR witness Jon Kinzle testified that he believed after several failed sales, the representative of the estate wanted to conclude the sale and was therefore willing to accept less than market value for the apartment building. *MTAB Hearing 10:33:55.* He

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testified to this in support of the DOR belief that the sale was a duress sale and that the \$750,000 sale price was, therefore, not indicative of market value. *Id.*

17. DOR also calculated a cost analysis value of \$895,430. *Dept Ex. A.* However, the DOR relied on the income approach to value the subject property. In the final analysis, the income method was selected as it yielded a lower market value for the property. *MTAB Hearing 10:28:42.*

18. DOR applied less than the actual rental data from the subject property when it built its income model for valuing the subject property. In fact, the DOR gave the taxpayer additional consideration by using less than actual rents and higher than actual vacancy calculations in their income model. These adjustments led to a lower final market value but were supported by Taxpayer's claims of a weak rental market in Butte. *MTAB Hearing 11:04:30.*

19. DOR contended that the Taxpayer had not alleged the DOR violated any procedures or policies or Montana law when valuing the subject property. *MTAB Hearing 11:27:16.* Taxpayer only claimed that the holdbacks and personal property were not properly deducted. Taxpayer did not further itemize or offer any proof of the value of the personal property aside from the unsigned addendums to the unsigned buy sell agreement. *Id.*

PROCEDURAL HISTORY

20. 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

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“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. 19.

21. 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 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.*
22. 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.
23. To whatever extent the foregoing findings of fact may be construed as conclusions of law, they are incorporated accordingly.

JURISDICTION AND STANDARD OF REVIEW

24. 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. §15-2-3011(1)(b).

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25. 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.
26. 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, this matter is reviewed without giving deference to the BCTAB hearing and subsequent decision. *Id.*

CONCLUSIONS OF LAW AND BOARD DISCUSSION

27. To whatever extent the following conclusions of law may be construed as findings of fact, they are incorporated accordingly.
28. “All taxable property must be assessed at 100 percent of its market value except as otherwise provided.” Mont. Code Ann. §15-8-111(1).
29. “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).
30. 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).
31. We find the Taxpayer failed to provide any evidence and little credible testimony that the value of his apartment building's “unattached” contents is worth the \$255,000 he requested that we deduct from his property’s value.

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32. We also decline to make any reductions for “attached” alleged personal property such as \$100,000 for windows or \$50,000 for the boiler needed to heat the building. No reasonable person would consider these amenities personal property which can be removed from a property on sale and, therefore, not taxable.
33. We also decline to reduce his value for holdbacks from the purchase price as he provided no evidence or testimony that any of the issues alleged in the holdback were not performed by the seller. He, therefore, enjoyed the benefit of the repairs and upgrades and should not have his value reduced. In both claims, the only documents in evidence describing the personal property were unsigned addendums to an unsigned buy-sell agreement.
34. 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.
35. The Board upholds the decision of the Butte Silver Bow County Tax Appeal Board allowing the Taxpayer a \$27,600 deduction for personal property included in the purchase of the Virginia Apartments. CTAB minutes indicate a thoughtful review of what allowances should be made, granting about \$1000 per apartment for the used appliances, plus some additional deduction for common area carpet and furnishings. We decline to second guess the allowances made by the county board and defer to their local

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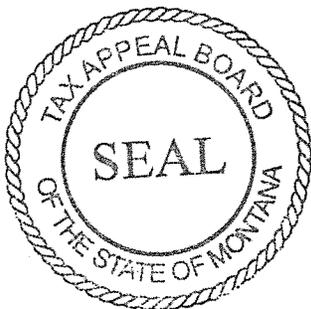
knowledge of fair adjustments for the personal property reasonably claimed by the taxpayer.

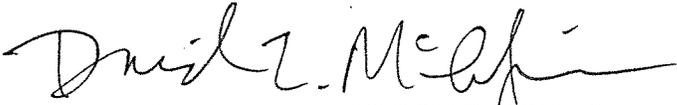
36. It is clear in this case that the taxpayer did not meet his burden to prove the DOR failed to reasonably establish market value.

ORDER

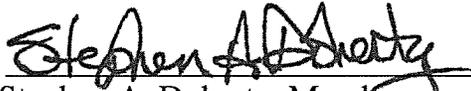
37. VIRGINIA APTS. LLLP's appeal and complaint is denied in part.
38. DOR is ordered to set the value of the property at \$700,000 for 2019/2020 tax years.

Ordered November 17, 2020

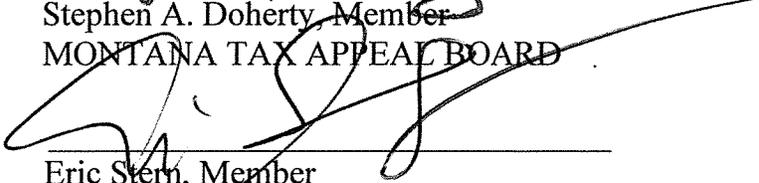




David L. McAlpin, Chairman
MONTANA TAX APPEAL BOARD



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, Email and Mail Services Bureau of the State of Montana on November 17, 2020 to:

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