

Before The Montana Tax Appeal Board

FILED

NOV 17 2020

Montana Tax Appeal Board

CHRISTOPHER COX,

Appellant,

v.

STATE OF MONTANA,
DEPARTMENT OF REVENUE,

Respondent.

CASE №: PT-2020-6

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

STATEMENT OF THE CASE

This 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 Mr. Cox's appeal of this property's appraised value for tax years 2019 and 2020. At the conclusion of the hearing the BCTAB made no adjustment to the property value. BCTAB felt the purchase price and income generated was consistent with DOR's revenue income models. We Affirm the BCTAB's determination.

ISSUE TO BE DECIDED

The Taxpayer disputed the decision of the BCTAB. The Taxpayer requests a valuation of \$64,765, with \$34,000 of personal property. The Montana Department of Revenue (DOR) believes the property has been valued correctly at \$95,600 using the income approach to value the subject property.

Before The Montana Tax Appeal Board
CHRISTOPHER COX v. STATE OF MONTANA, DEPARTMENT OF
REVENUE

PROPERTY DESCRIPTION

The subject property is located at 651 W. Granite Street, Butte. The property geocode is 01-1197-13-2-33-03-0000, and with a legal description of Plymouth Addition, S13, T3N, R8W, Block 4, Lot 18. This property is in DOR neighborhood 201.010A. The property is a home converted into a duplex rental, consisting of 2 rental apartment units, which totals 2,817 square feet.

EXHIBIT LIST

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

Ex. A: 2019 property record cards for 651 W. Granite Street, including pictures of the interior and exterior of the subject property;

Ex. B: Buy/Sell agreement for 651 E. Granite, Smythe Family LLLP listed as buyer and realty transfer certificate for the subject property;

Ex C: Completed AB-26 form for 651 W. Granite. and AB-26 determination letter, stating an adjustment was not made because the recent sales and nearby rents support the value determined by the DOR's income approach;

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

Ex E: Sales comparison for the subject property using all commercial properties; and

Ex F: Appeal to the County Tax Appeal Board form with denial determination, 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.

Before The Montana Tax Appeal Board
CHRISTOPHER COX v. STATE OF MONTANA, DEPARTMENT OF
REVENUE

FINDINGS OF FACT

1. The Taxpayer purchased the subject property on May 23, 2019, for \$98,756.43 and believes it should be reduced in value to \$64,765. *Dept. Ex. B, Dept. Ex. F.* The DOR appraised the subject property land at \$7,938 and the improvements at \$87,662, for a total of \$95,600. *Dept Ex. A.*
2. Mr. Cox 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 that while the real property was purchased for \$98,756.43, after all personal property claimed by Taxpayer was deducted, he believes that deduction yields a value of \$64,765. *Dept. Ex. C.*
3. The DOR sent a Letter of Determination to the Taxpayer on August 23, 2019, with the conclusion that the property value was not reduced because the DOR value was supported by the recent sales and rents reflecting the most defensible value as indicated by an income approach analysis. *Id.*
4. 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 9, 2019. *Dept. Ex. F.*
5. The BCTAB declined to lower the Taxpayers value. BCTAB ruled many of the personal property items reported are fixtures of the real property. Further, the purchase price and income generated are consistent with DOR's income models of valuation for the property. *Id.*

Before The Montana Tax Appeal Board
CHRISTOPHER COX v. STATE OF MONTANA, DEPARTMENT OF
REVENUE

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 value of the personal property. *MTAB Appeal Form Dkt. 1.*
7. Christopher Cox 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 \$1,234.56 for the seller's expenses at closing. *Dept. Ex. B.*
9. The buy/sell agreement for the subject property allocates the purchase price as: \$10,000 for the roof; \$5,000 for windows; \$5,000 for floor coverings; \$2,000 for two stoves; \$2,000 for two refrigerators; \$1,000 for the water heater; \$10,000 for heating system; \$10,000 for plumbing and fixtures; \$10,000 for electrical and wiring; \$10,000 for two sets of kitchen cabinets; \$4,000 for two sets of window treatments; \$10,000 for interior paint; \$10,000 for the land; and \$11,765.43 for the building. *Id.*
10. The only evidence presented to the Board of any personal property or its market value was in photos taken by the DOR appraiser. *Dept. Ex. A.*
11. DOR used the income approach to value the subject property. *Id.*
12. 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 03:22:23.* Taxpayer only claimed that the personal property was not properly deducted but did not

Before The Montana Tax Appeal Board
CHRISTOPHER COX v. STATE OF MONTANA, DEPARTMENT OF
REVENUE

itemize or provide any proof of the personal property value aside from the addendums to the buy sell agreement. *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. 9* 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. 14; Appellant's Request to Reconsider, Dkt. 19.*
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 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. 10.* 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 to 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

Before The Montana Tax Appeal Board
CHRISTOPHER COX v. STATE OF MONTANA, DEPARTMENT OF
REVENUE

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, 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).

Before The Montana Tax Appeal Board
CHRISTOPHER COX v. STATE OF MONTANA, DEPARTMENT OF
REVENUE

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 unattached contents of the subject property are worth \$34,000 the Taxpayer requested that we deduct from his value. The only document in evidence describing the personal property were addendums to an buy sell agreement and a hand-written ledger sheet.
26. We also decline to make any reductions for attached alleged personal property such as \$10,000 for the roof, or \$5,000 for windows. No reasonable person would consider these amenities personal property which can be removed from a property on sale and therefore would not be taxable.
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

Before The Montana Tax Appeal Board
CHRISTOPHER COX v. STATE OF MONTANA, DEPARTMENT OF
REVENUE

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.

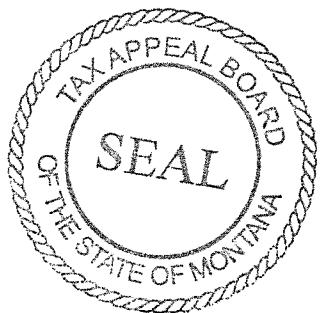
28. The Board upholds the decision of the Butte Silver Bow County Tax Appeal Board. The purchase price is consistent with the sale of similar properties provided by the DOR, and the income generated is like the income model data provided by the DOR.
29. In this case the Taxpayer did not meet his burden to prove the DOR failed to reasonably establish market value.

Before The Montana Tax Appeal Board
**CHRISTOPHER COX v. STATE OF MONTANA, DEPARTMENT OF
REVENUE**

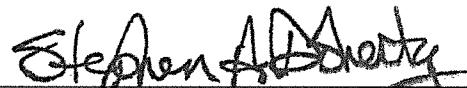
ORDER

30. Christopher Cox's appeal and complaint is denied.
31. DOR is ordered set the value of the property at \$95,600 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).

Before The Montana Tax Appeal Board
CHRISTOPHER COX v. STATE OF MONTANA, DEPARTMENT OF
REVENUE

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:

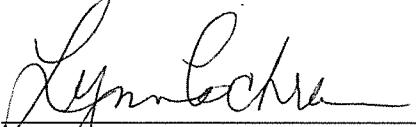
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