

NOV 17 2020

Montana Tax Appeal Board

**SMYTHE FAMILY, LLLP,**

*Appellant,*

v.

**STATE OF MONTANA,  
DEPARTMENT OF REVENUE,**

*Respondent.*

CASE №: **PT-2020-10**

**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 multifamily apartments building in Butte. Mr. C.C. Cox appeared on behalf of the taxpaying entity and owner of the building, Smythe Family LLLP. A hearing held by BCTAB on December 9, 2019, to review Smythe Family LLLP appeal of this building's appraised value for tax years 2019 and 2020. At the conclusion of the hearing the BCTAB choose not grant Taxpayer's request to reduce the appraised value of his property. The Taxpayer argued that the price he paid for the property, rather than the DOR's appraisal, reflects fair market value. However, the BCTAB ruled that the sale did not meet the test for a fair market value transaction between a willing buyer and a willing seller. We affirm the BCTAB's determination.

**ISSUE TO BE DECIDED**

Whether the subject property's purchase was an arms-length transaction, the Taxpayer requests a valuation of \$50,000. The DOR believes the property was valued correctly at \$81,134 using the cost approach.

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**PROPERTY DESCRIPTION**

The subject property is located at 651 Maryland Ave., in Butte. The property geocode is 01-1197-13-4-32-10-0000, and has a legal description of Upton Add, S13, T3 N, R8 W, Block 5, Lot 4-5, POR North Star South Star January Lodes 16 to Complete. This property is in DOR neighborhood 201.010A in Butte. The property duplex apartment building consisting of 2 rental units, and a single-family house, which totals 2,484 square feet. The subject land also includes a vacant lot that is too small to build a house or rental property on but could sustain a garage or be considered the yard of the subject property.

**EXHIBIT LIST**

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

Ex. A: 2020 property record cards for 651 Maryland Ave., including a diagram of the property, Exhibit A Bates Pg. 19 was a blank page and was omitted from the record;

Ex. B: Reality transfer Certificate for the subject property, pictures of the interior and exterior of the subject property, and a rental advertisement for the subject property;

Ex. C: Completed AB-26 form for 651 Maryland Avenue and an AB-26 determination letter stating an adjustment in value was made from \$113,400 to \$81,134;

Ex. E: Sales comparison report prepared by the DOR;

Ex. F: Appeal to the County Tax Appeal Board form with BCTAB minutes;

Ex. D: DOR Residential sales verification form was moved for admission by the DOR, but on further investigation, the form was for the wrong property and was withdrawn by the DOR.

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 July 12, 2018, for \$50,000 and believed the property should be valued at \$50,000. *Dept. Ex. B, Dept. Ex. C.* The DOR appraised the land at \$11,164 and the improvements at \$69,970, for a total of \$81,134. *Dept Ex. A.*
2. Smythe Family LLLP. contested the 2019/2020 DOR property appraisal by filing a DOR form AB-26 request for Informal Classification and Appraisal Review on July 11, 2019, contending that the recent sale price is the best indication of market value and therefore should constitute the fair market value. *Dept. Ex. C.*
3. The DOR sent an AB-26 Determination Letter to the Taxpayer on August 23, 2019, reducing the property's value from \$113,400 to \$81,134. After conducting an on-site review of the property's exterior, the DOR downgraded the condition and desirability rating. After undertaking an inquiry to validate the \$50,000 sale price, the DOR appraiser determined the sale was not an arms-length transaction and thereby was not a true indication of market value. *Dept. Ex. C.*
4. The Taxpayer filed an appeal to the Butte-Silver Bow County Tax Appeal Board on September 25, 2019, and a hearing was held in Butte on December 9, 2019. *BCTAB Appeal Form.*
5. The BCTAB declined to lower the Taxpayer's property value further. BCTAB agreed with the DOR analysis that the sale did not meet the test of a fair market value transaction between a willing buyer and seller. The record indicates the BCTAB felt the elderly seller was under duress to sell the property and move out of state. *BCTAB Final Determination Dkt. 5.*

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6. The Taxpayer appealed the BCTAB decision to this Board on January 21, 2020, and stated the property was purchased in an arms-length transaction and that a fair price was paid, considering the condition of the property. *MTAB Appeal Form Dkt. 1.*
7. Smythe Family 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. Taxpayer testified the property condition was bad. *MTAB hearing 7:43:30.* The Taxpayer testified he paid \$2,000 to rent a dumpster and hire labor to remove trash from the yard and inside the apartments, including the heating system. Taxpayer further testified he spent \$59,000 on interior renovations, including stabilizing the building foundation, moving walls, and replacing bathtubs, blinds, heaters, appliances, and painting most of the interior. *MTAB Hearing 7:46:13.* Additionally, the roof covering was replaced at the cost of \$8,000. *Id.*
9. The DOR appraiser was not allowed access to the inside of the building to inspect it and was therefore unable to verify the capital improvements. DOR appraiser John Kinzle testified that Taxpayer declined entry because he did not want to disturb his tenants. *MTAB Hearing 7:59:30.*
10. DOR appraiser Kinzle testified that he applied 65% and 79% depreciation to the two improvement structures and calculated value using the cost method of appraisal. *MTAB Hearing 8:02:01.*
11. Mr. Kinzle testified that the property appraisal might be low due to the recent capital improvements made by the Taxpayer. *MTAB Hearing 8:17:15.* If a building permit had

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been filed during construction to make the upgrades, he would have reviewed the permit for changes to the property. *Id.* Mr. Kinzle testified that it is illegal to do a remodel in Bute-Silver Bow county without a building permit. *Id.*

12. Mr. Kinzle further testified that the sale was not an arms-length sale because the property was not listed on the open market, failing to meet the requirements set out in Mont. Admin R. 42.20.432. *MTAB Hearing 7:54:12.* Mr. Kinzle testified that the price seemed low and that the property was by his observation in duress and unoccupied. *Id.* Mr. Kinzle was unable to contact the seller to verify the sale details and believes that she moved out of the state soon after the sale. *Id.* Mr. Kinzle testified he followed all relevant rules, statutes, and industry standards when he evaluated the subject property. Based upon his inspection, Mr. Kinzle believes the Taxpayer got a great deal when he bought the duplex and home for \$50,000. *MTAB Hearing 7:59:10.*
13. The Taxpayer testified that the former property owner “wanted to take her money and leave town.” *MTAB Hearing 7:43:10.*
14. DOR attorneys contended that they had met their legal burden in assessing the property's market value; and that the Taxpayer has never alleged a DOR violation of any industry procedures, policies or Montana law when valuing the subject property meaning that the Taxpayer has not met his burden. *MTAB Hearing 8:40:00.*

**PROCEDURAL HISTORY**

15. 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

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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. 19.*

16. 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.*
17. 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 with his information. He relied on the very limited exhibits in the record from the County hearing.
18. To whatever extent the foregoing findings of fact may be construed as conclusions of law, they are incorporated accordingly.

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**JURISDICTION AND STANDARD OF REVIEW**

19. 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.
20. The Montana Tax Appeal Board (Board) is an independent entity not affiliated with the Montana Department of Revenue (DOR). Under the authority of Mont. Code Ann. § 15-2-301
21. 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**

22. To whatever extent the following conclusions of law may be construed as findings of fact, they are incorporated accordingly.
23. “All taxable property must be assessed at 100 percent of its market value except as otherwise provided.” Mont. Code Ann. §15-8-111(1).
24. “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).

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25. 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).
26. As a general rule, the DOR's appraisal 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.
27. The Board finds that the DOR met their initial burden of presenting evidence and testimony that they made reasonable efforts to consider the three appraisal methods and apply them to set a defensible market value for this property.
28. First, we consider the market sales approach. Even from the Taxpayer, we heard credible testimony that led us to conclude the seller was compelled to sell the property to the Taxpayer at a price below what the market at the time would normally bear. DOR provided unrefuted evidence of similar sales in nearby neighborhoods in Butte, time trended to the lien date of January 1, 2018. None of those similar sales were as low as the \$50,000 paid by the Taxpayer. The Taxpayer offered no evidence or contrary sales supporting his proposed value. We find the testimony at the hearing and the evidence in the record tips toward the DOR's argument that this transaction did not meet the definition of arms-length.
29. Second, we review the evidence of the income method as being appropriate. The property was uninhabited for some time prior to the sale. We find that without any rental

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income history to estimate the income method of value, it was appropriate for the DOR to bypass the income method.

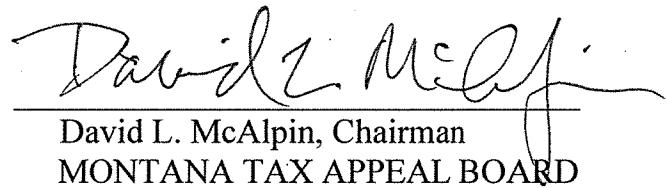
30. Third, after reaching the conclusion that the cost method was the most defensible valuation method to find market value, we look to whether the DOR properly applied the cost method. We find no indication the DOR erred in its cost method analysis; with unrefuted evidence of over \$59,000 spent making the property rentable after the sale, the DOR could have valued it higher than it did.
31. By offering no evidence during the hearing to support his case, the Taxpayer has fallen short. We decline to further reduce the value assigned to this property by the DOR as the Taxpayer did not prove the DOR erred in its task to assign a fair market value to the subject.
32. 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 DOR 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.
33. It is clear, in this case, that the Taxpayer did not meet his burden to prove the DOR failed to reasonably establish market value.

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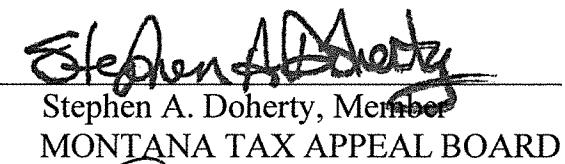
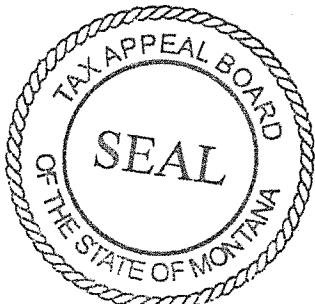
**ORDER**

34. Smythe Family LLLP's appeal and the complaint is denied, the BCTAB decision is affirmed.
35. DOR is ordered to set the value of the property at \$81,134 for 2019/2020 tax years.

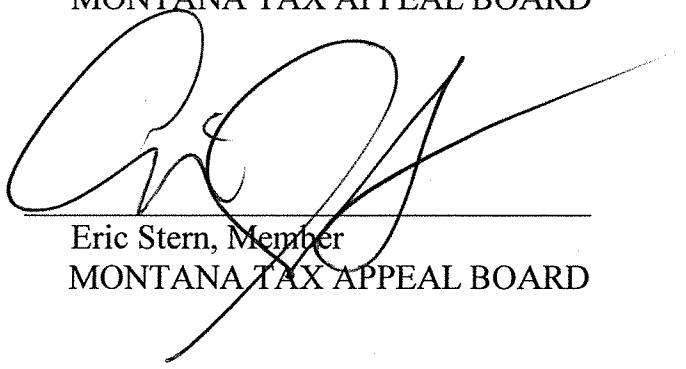
Ordered November 17, 2020



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:

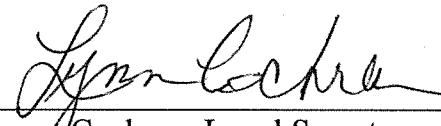
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Lynn Cochran, Legal Secretary  
MONTANA TAX APPEAL BOARD