

SMYTHE FAMILY, LLLP,*Appellant,*

v.

**STATE OF MONTANA,
DEPARTMENT OF REVENUE,***Respondent.***CASE №: PT-2020-11****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 apartment building in Butte. Mr. C.C. Cox appeared on behalf of the taxpaying entity and owner of the building, Smythe Family LLLP. A hearing was held by the county Tax Appeal Board on December 9, 2019, to review the Smythe Family LLLP. appeal of this building's appraised value for tax years 2019 and 2020, at the conclusion of which the BCTAB chose not to adjust the property value. BCTAB felt the purchase price and income generated was consistent with DOR's income models. We affirm the BCTAB's determination.

ISSUE TO BE DECIDED

The Taxpayer requests a valuation of \$92,000. The DOR believes the property was valued correctly at \$125,900 using the income approach.

Before The Montana Tax Appeal Board
SMYTHE FAMILY LLLP. v. STATE OF MONTANA, DEPARTMENT OF
REVENUE

PROPERTY DESCRIPTION

The subject property is located at 326 S. Washington Street, in Butte. The property geocode is 01-1197-13-3-72-23-0000, and has a legal description of Butte Townsite S13, T3 N, R8 W, Block 62, Lot 13, N15' of Lot 13, S 16' of LT 14. This property is in neighborhood 201.010A, Butte Montana. The property is a duplex apartment building consisting of 2 rental units, which totals 2,434 square feet.

EXHIBIT LIST

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

- Ex. A: 2020 property record cards for 326 S. Washington Street, including a diagram of the property and pictures of the interior and exterior of the subject property;
- Ex. B: Reality transfer Certificate for the subject property;
- Ex C: Completed AB-26 form for 326 S. Washington Street and an AB-26 determination letter;
- Ex D: Residential sales verification form, signed by Smythe Family LLLP.;
- Ex E: Sales comparison report prepared by the DOR; and
- Ex. F: Appeal to the County Tax Appeal Board form with 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.

FINDING OF FACT

1. The Taxpayer purchased the subject property on August 9, 2017, for \$130,000 and believes it should be valued at \$92,000. *Dept. Ex. B, Dept. Ex. C.* The DOR has

Before The Montana Tax Appeal Board
SMYTHE FAMILY LLLP. v. STATE OF MONTANA, DEPARTMENT OF
REVENUE

appraised the subject property land at \$9,690 and the improvements at \$116,210, for a total of \$125,900. *Dept. Ex. A.*

2. Smythe Family LLLP. 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 Taxpayer contends the recent sale price, minus the personal property, is the best indication of market value and should be the value set for the subject property by the DOR. *Dept. Ex. C.*
3. The DOR sent an AB-26 Determination letter to the Taxpayer on August 23, 2019; the DOR did not adjust the property's value. DOR stated the property's sale price supports the valuation, and comparable market sales and the cost approaches support the market value determined by the DOR appraisers. *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 on December 9, 2019. *Dept. Ex. F.*
5. The BCTAB declined to lower the Taxpayer's market value. BCTAB felt the purchase price is consistent with similar properties, and the income generated was compatible with the DOR's income models offered at the hearing to validate the assigned value.
6. The Taxpayer appealed the BCTAB decision with this Board on January 21, 2020, and stated the DOR's assessed value of the subject property failed to deduct the value of the personal property. *MTAB Appeal Form.*

Before The Montana Tax Appeal Board
SMYTHE FAMILY LLLP. v. STATE OF MONTANA, DEPARTMENT OF
REVENUE

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 remodeled the property after the purchase, including all new appliances.
MTAB Hearing 8:47:00.
9. Taxpayer paid \$130,000 for the subject property. Taxpayer contends he overpaid for the unit because he had a deal with the seller to buy two separate properties for a total of \$240,000. *MTAB Hearing 8:47:56.* The other sale fell through, and the Taxpayer only purchased the one unit that is the subject of this appeal. *Id.*
10. Taxpayer testified that the property should be valued at \$130,000 minus all personal property. *MTAB Hearing 8:49:06.* He described the personal property as two stoves, two refrigerator, two washers, and two dryers. *Id.* Taxpayer did submit a handwritten ledger at the BCTAB hearing indicating a value of \$1,000 per appliance, \$10,000 for window treatments, and \$10,000 for floor coverings for a total of \$28,000 worth of personal property *BCTAB Record Ex. 1.*
11. Taxpayer filled out a DOR Residential Sales Verification form, where he estimated the value of the personal property as \$6,000. *Dept. Ex. D.*
12. The only evidence presented to the Board of any personal property was in photos provided by the DOR appraiser. *Dept. Ex. A.* The photos appear to show floor coverings that are not removable. *Id.*

Before The Montana Tax Appeal Board
SMYTHE FAMILY LLLP. v. STATE OF MONTANA, DEPARTMENT OF
REVENUE

13. DOR used an income approach to value the property based on the rents the Taxpayer provided to the DOR. *MTAB Hearing 9:05:15*. The market sales model was not used because it is a commercial property. *Id.*
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 appraisal procedures, policies, or Montana law when valuing the subject property, meaning that the Taxpayer has not met his burden. *MTAB Hearing 9:42:32*. Taxpayer only claims that the personal property was not correctly deducted and did not further itemize or offer any proof of the value of the personal property aside from the Reality Transfer Certificate and a handwritten ledger. *Id.*

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 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 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

Before The Montana Tax Appeal Board
SMYTHE FAMILY LLLP. v. STATE OF MONTANA, DEPARTMENT OF
REVENUE

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 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.

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.*

Before The Montana Tax Appeal Board
SMYTHE FAMILY LLLP. v. STATE OF MONTANA, DEPARTMENT OF
REVENUE

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).
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 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.
27. 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 \$28,000. The only document in evidence describing the personal property was the Realty Transfer

Before The Montana Tax Appeal Board
SMYTHE FAMILY LLP. v. STATE OF MONTANA, DEPARTMENT OF
REVENUE

Certificate and a handwritten ledger. Both documents were contradictory as to the value of personal property.

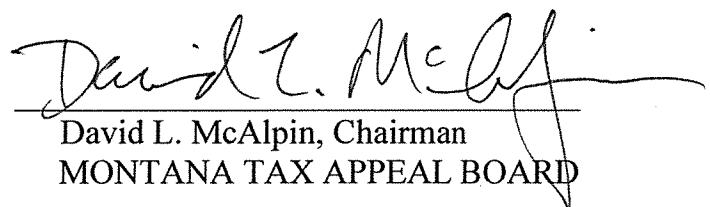
28. We also decline to make any reductions for attached alleged personal property such as \$10,000 for windows or \$10,000 for floor coverings. No reasonable person would consider these amenities personal property, which can be removed from a property on sale and, therefore, not taxable.
29. Finally, 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 LLP”—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.
30. The Board upholds the Butte-Silver Bow County Tax Appeal Board. 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.
31. It is clear, in this case, that the Taxpayer did not meet his burden to prove the DOR failed to reasonably establish market value.

Before The Montana Tax Appeal Board
**SMYTHE FAMILY LLLP. v. STATE OF MONTANA, DEPARTMENT OF
REVENUE**

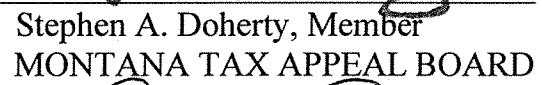
ORDER

32. Smythe Family LLLP. appeal and complaint are denied, The BCTAB decision is affirmed.
33. DOR is ordered to set the value of the property at \$125,900 for 2019/2020 tax years.

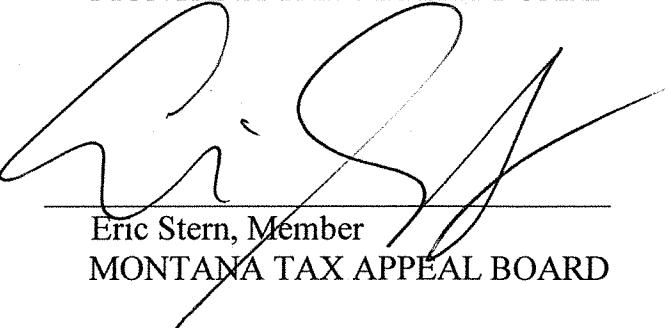
Ordered November 17, 2020



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
SMYTHE FAMILY LLLP. 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:

Smythe Family LLLP,
P.O. Box 751
Plains, MT 59859

Smythe Family LLLP,
P.O. Box 4695
Butte, MT 59702-4695

Montana Department of Revenue
P.O. Box 7701
Helena, MT 59604-7701

Silver Bow County Tax Appeal Board
2 Bittersweet Drive
Butte, MT, 59701

Kory Hofland, Property Assessment Division
Montana Department of Revenue
P.O. Box 7701
Helena, MT 59604-7701



Lynn Cochran, Legal Secretary
MONTANA TAX APPEAL BOARD