

FILED

Before The Montana Tax Appeal Board

NOV 17 2020

Montana Tax Appeal Board

SMYTHE FAMILY, LLLP.,

CASE №: PT-2020-12

Appellant,

v.

STATE OF MONTANA,
DEPARTMENT OF REVENUE,

Respondent.

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. A hearing was held by the county Tax Appeal Board on December 10, 2019, to review the Smythe Family LLLP appeal of this building's appraised value for tax years 2019 and 2020. At the conclusion of the hearing the BCTAB chose not to adjust the property value. BCTAB felt the purchase price and income generated were consistent with DOR's income models, and the personal property items reported were fixtures to the real property. We affirm the BCTAB's determination.

ISSUE TO BE DECIDED

The Taxpayer requests a valuation of \$57,200. The DOR believes the property was valued correctly at \$73,300 using the income approach.

PROPERTY DESCRIPTION

The subject property is located at 210 S. Washington Street, in Butte. The property geocode is 01-1197-13-3-81-15-0000, and has a legal description of Butte Townsite S13, T3 N, R8 W, Block 49, Lot 17. This property is in DOR neighborhood 201.010A. The property is a home

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

remodeled into an up and down duplex. Consisting of 2 rental units, which totals 2,241 square feet.

EXHIBIT LIST

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

Ex. A: 2019 property record cards for 210 S. Washington Street, including a diagram of the property;

Ex. B: Reality Transfer Certificate and Sales Verification Form for the subject property;

Ex C: Completed AB-26 form for 210 S. Washington Street and an AB-26 determination letter, stating an adjustment in value was made from \$92,200 to \$73,300;

Ex D: Residential sales verification form for 214 S. Washington, signed by John Kenzle, was later withdrawn by the DOR because it was for the wrong address; and

Ex E: Sales comparison report prepared by the DOR;

The Board admitted the following exhibits submitted by the Taxpayer.

Ex D: Residential sales verification form for 214 S. Washington, signed by John Kenzle.

FINDINGS OF FACT

1. The Taxpayer purchased the subject property on January 17, 2018, for \$158,400. Taxpayer purchased two properties at the same time and assigned \$79,200 to the purchase of the subject property. Taxpayer allocated \$22,000 of the property's purchase price to personal property, leaving a requested market value of 57,200. *Dept. Ex. B, Dept. Ex. C.* The DOR apprised the subject property land at \$9,520 and the improvements at \$63,780, for a total of \$73,300. *Dept Ex. A.* The adjoining property was also appealed, but that dispute is appealed under cause number PT-2020-13.

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

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. The Taxpayer contends the recent sale price, minus 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 reducing the value of the property from \$92,000 to \$73,000. The DOR adjusted the number of bedrooms in the duplex and rent rates to reflect current rents to justify the reduction. *Dept. Ex. C.*
4. The DOR Appraiser was not allowed inside the property for inspection purposes *Dept. Ex. C.* Taxpayer stated he did not have access to the inside of the property because it was rented. *MTAB Hearing 6:12:01.*
5. 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 10, 2019. *BCTAB Appeal Form.*
6. The BCTAB declined to lower the Taxpayers property value further. BCTAB agreed with the DOR analysis that personal property was included in the purchase price, but the amount reported was inflated. Further, the purchase price and income generated is consistent with the DOR's income models.
7. The Taxpayer appealed the BCTAB decision to this Board on January 21, 2020, stating the subject property's assessed value includes the value of the personal property, including window treatments, stoves, and refrigerators. *MTAB Appeal Form Dkt. 1.*

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

8. 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.*
9. Taxpayer did not submit any evidence to this Board regarding personal property included in the sale of the subject property. Taxpayer relied on the record from the BCATB. Taxpayer entered into evidence at the BCTAB, a handwritten ledger listing the personal property that included \$2,000 for stoves, \$2,000 for refrigerators, \$10,000 window treatments, and \$10,000 for floor coverings. *BCTAB Record Ex. 1.*
10. Taxpayer testified that the window covering is considered blackout curtains. *MTAB Hearing 5:12:00.* The renter in the lower unit had re-work to window treatments to incorporate reflective material to block out light; the taxpayer referred to this material as “something similar to aluminum foil but does not represent that it is aluminum foil.” *Id.*
11. Taxpayer replaced the upstairs heater at the cost of \$3,000. *MTAB Hearing 5:15:32.*
12. Taxpayer believes the best indication of value is the purchase price of the property of \$57,200, with personal property subtracted. *MTAB Hearing 5:21:15*
13. For the DOR to consider a property’s purchase price as market value, the Taxpayer must follow the guidelines set out in Mont. Admin R. 42.20.454. *MTAB Hearing 5:38:33.* DOR contends the Taxpayer did not follow Mont. Admin R. 42.20.454 and could not validate the sale price as the market value. *MTAB Hearing 5:59:15.*

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

14. DOR estimated the value of the property using the cost approach to be \$76,990. *MTAB Hearing 5:45:50*. Using the income approach, the DOR valued the property at \$73,300. *Id.* The market approach was not used because the subject property is a commercial building consisting of multi-family units. *Id.*
15. DOR appraiser John Kinzle testified that the sale was not an arm-length transaction *MTAB Hearing 5:51:40*. The sale included two parcels; each property was listed separately for a higher price, and when contacted, the seller had sellers remorse and wished he had sold the properties for more. *Id.* Further, the seller might have been convinced to sell by the real estate agent. *Id.*
16. Mr. Kinzle talked to the property seller and confirmed that he did sell the appliances in the subject property to Smythe Family LLLP. *MTAB Hearing 6:12:10*. The seller was not aware of any value place on the appliance. *Id.*
17. 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 6:19:00*. Taxpayers only claim is that personal property was not properly deducted but did not itemize or provide any proof of the personal property's value. *Id.*

PROCEDURAL HISTORY

18. 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

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

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.

19. 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.*
20. 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.
21. To whatever extent the foregoing findings of fact may be construed as conclusions of law, they are incorporated accordingly.

JURISDICTION AND STANDARD OF REVIEW

22. 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.

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

23. 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
24. 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

25. To whatever extent the following conclusions of law may be construed as findings of fact, they are incorporated accordingly.
26. “All taxable property must be assessed at 100 percent of its market value except as otherwise provided.” Mont. Code Ann. §15-8-111(1).
27. “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).
28. 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).

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

29. 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.
30. We find the Taxpayer failed to provide any evidence and little credible testimony that the value of the unattached contents of his apartment building is worth \$22,000 he requested that we deduct from his value. The only document in evidence describing the personal property was an unsigned buy-sell agreement and a handwritten ledger introduced at the BCTAB hearing.
31. We also decline to make any reductions for the attached alleged personal property, such as \$10,000 for window treatments 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.
32. The Board upholds the decision of the Butte-Silver Bow County Tax Appeal Board. We decline to second guess the county board and defer to their local knowledge of fair adjustments for the personal property reasonably claimed by the Taxpayer.
33. Lastly, the Taxpayer has not complied with Mont. Admin R. 42.20.454. For the DOR to use sale price as an indication of market value, the Taxpayer must follow Mont. Admin R. 42.20.454 (a-f), because the Taxpayer failed to meet all the requirements; the Board cannot use the recent sale price as an indication of market value.

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

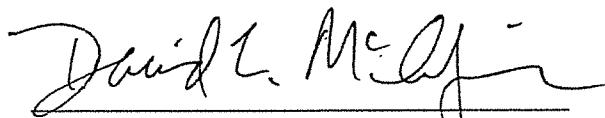
34. We would note that Mr. Cox, in this appeal and six others heard over a two day period, provided testimony that this board found to be highly incredible, with regard to his denials of having been served documents by the DOR. As an example, he argued that mailings from the DOR were addressed to Smythe 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.
35. 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*

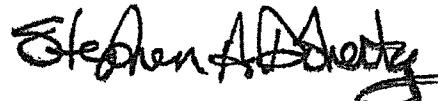
ORDER

36. Smythe Family LLLP's appeal and complaint is denied.
37. DOR is ordered to set the value of the property at 73,300 for 2019/2020 tax years.

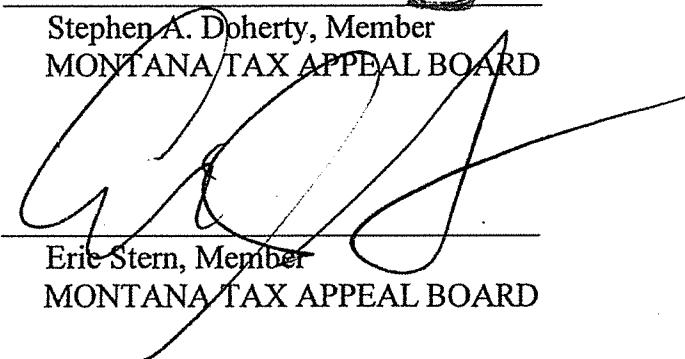
Ordered November 17, 2020



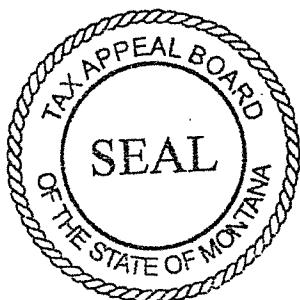
David L. McAlpin, Chairman
MONTANA TAX APPEAL BOARD



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:

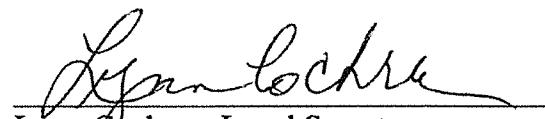
Smythe Family LLLP,
P.O. Box 751
Plains, MT 59859

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

