

NOV 17 2020

Montana Tax Appeal Board

**SMYTHE FAMILY, LLLP,**

  
*Appellant,*

v.

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

*Respondent.*

CASE №: PT-2020-13

**FINDINGS 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 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 the Smythe Family LLLP. appeal of this building's value for tax years 2019 and 2020. At the conclusion of the hearing the BCTAB choose not to adjust the property value. BCTAB felt the DOR made adequate adjustments that reflected the condition of the property and the value. We affirm the BCTAB's determination

**ISSUE TO BE DECIDED**

The Taxpayer disputed the decision of the BCTAB. The Taxpayer requests a valuation of \$57,200. The DOR believes the property was valued correctly at \$72,690 using the cost approach.

**PROPERTY DESCRIPTION**

The subject property is located at 214 S. Washington Street, Butte. The property geocode is 01-1197-13-3-81-14-0000, and with a legal description of Butte Townsite S13, T3 N, R8 W, Block

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49, Lot 16. This property is in DOR neighborhood 201.010A. The property is a duplex apartment building consisting of 2 rental units, which totals 1,319 square feet.

**EXHIBIT LIST**

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

Ex. A: 2019 property record cards for 214 S. Washington Street, Geocode 01-1197-13-3-81-14-0000 including a diagram of the property and pictures of the interior and exterior of the subject property;

Ex. B: Reality Transfer Certificate;

Ex C: Completed AB-26 form for 212 S. Washington Street and an AB-26 determination letter for property 01-1197-13-3-81-14-0000, stating an adjustment in value was made from \$86,890 to \$72,690;

Ex D: Residential sales verification form for 214 S. Washington, geocode 01-1197-13-3-81-14-0000, signed by John Kenzle; and

Ex E: Sales comparison report prepared by the DOR.

The Board admitted the following exhibits submitted by the Taxpayer:

Ex. 1. Appellant's list of Witness and Exhibits filed on August 7, 2020; and

Ex. 2. A postage label from the State of Montana to C.C. Cox.

**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 allocated \$79,200 to the purchase of the subject property. Taxpayer allocated \$22,000 of the purchase price to personal property, leaving a market value of \$57,200 in his opinion. *Dept. Ex. B, Dept. Ex. C.* The DOR values the subject property land at \$9,520 and the improvements at

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\$63,170, for a total of \$72,690. *Dept Ex. A.* The adjoining property was also appealed, but that dispute is appealed under cause number PT-2020-12.

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, therefore, 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 27, 2019, reducing the value of the property from \$86,890 to \$72,690. The DOR value adjustments were due to the depreciation of the upper rental unit. *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 10, 2019. *BCTAB Appeal Form.*
5. The BCTAB declined to lower the Taxpayer's property value further. BCTAB agreed with the DOR analysis that the adjustments made during the AB-26 process adequately reflected the property's condition and value. Further, the Taxpayer never provided any evidence of the cost of personal property. *BCTAB Final Determination Dkt. 5.*
6. The Taxpayer appealed the BCTAB decision to this Board on January 21, 2020 and stated the assessed value of the subject property includes the value of the personal property, including window treatments, stoves, and refrigerators. *MTAB Appeal Form Dkt. 1.*

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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. According to Mr. Cox it is the Smythe Family LLLP's business practice when purchasing a property to have the seller allocate value to the personal property included in the sale. *MTAB Hearing 6:53:00.*
9. Smythe Family LLLP, remodeled the upstairs rental unit of the subject property at the cost of around \$3,000. *MTAB Hearing 6:53:43.*
10. Taxpayer testified that a stove or refrigerator is worth \$1,000 in place to him. *MTAB Hearing 7:00:49.* Taxpayer further testified that the upstairs apartment has wood floors and was unsure about the lower unit floors. *Id.*
11. The only evidence presented to the Board at the hearing of any personal property was in photos taken by the DOR appraiser. *Dept. Ex. A; MTAB Hearing 7:05:10.*
12. DOR appraiser John Kinzle testified that he followed all Montana code sections, DOR administrative rules, and IAAO standards when assessing the property. *MTAB hearing 7:07:30.*
13. Mr. Kinzle used the cost approach to value the subject property. *MTAB hearing 7:08:40.* Mr. Kinzle also calculated the value of the property using the income approach; it yielded a value of \$84,700. *MTAB Hearing 7:10:00.* The comparable sale approach was not used because the property is a multiple-family dwelling. *Id.*

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14. The DOR appraiser was not allowed an internal inspection but was able to inspect the outside of the subject property. *MTAB Hearing 7:18:00*. After the external inspection, the DOR appraiser changed the physical condition from average to fair. That adjustment reduced the taxable value by \$15,000. *Id.*
15. In order 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 6:56:10*. DOR contends the Taxpayer did not follow Mont. Admin R. 42.20.454 and could not use the sale price as the market value. *MTAB Hearing 5:59:15*.
16. DOR appraiser John Kinzle testified that the sale was not an arm-length transaction *MTAB Hearing 7:22:40*. 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.*
17. Mr. Kinzle talked to the seller of the property and confirmed that he did sell the appliances to Smythe Family LLLP. *Dept Ex. D*. The seller, was not aware of any allocated value placed on the personal property. *MTAB Hearing 7:2322*.
18. 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 7:33:01*. Taxpayer only claimed that the personal property was not properly deducted but did not itemize or provide any proof of the personal property value. *Id.*

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**PROCEDURAL HISTORY**

19. 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.
20. 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.*
21. 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.

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

**JURISDICTION AND STANDARD OF REVIEW**

23. 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.

24. The Montana Tax Appeal Board is an independent entity not affiliated with the Montana Department of Revenue. Under the authority of Mont. Code Ann. § 15-5-301

25. 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**

26. To whatever extent the following conclusions of law may be construed as findings of fact, they are incorporated accordingly.

27. “All taxable property must be assessed at 100 percent of its market value except as otherwise provided.” Mont. Code Ann. §15-8-111(1).

28. “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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29. 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).
30. 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.
31. 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 unsigned addendums to a buy-sell agreement and a handwritten ledger in the BCTAB record.
32. We also decline to make any reductions for 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.
33. The Board upholds the decision of the Butte-Silver Bow County Tax Appeal Board. CTAB minutes indicate a thoughtful review of what allowances should be. We decline to second guess the county board's allowances and defer to their local knowledge of fair adjustments for the personal property claimed by the Taxpayer.

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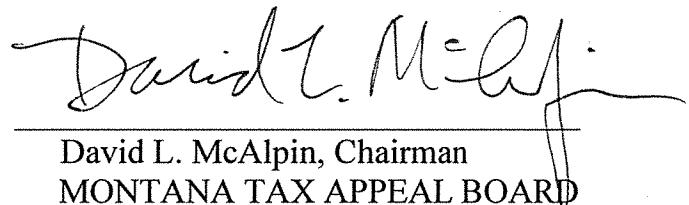
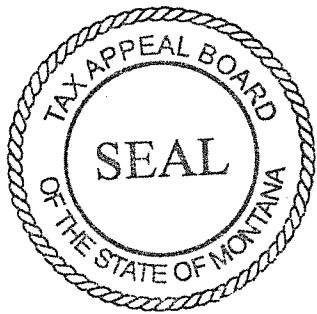
34. Lastly, the Taxpayer has not complied with Mont. Admin R. 42.20.454. In order for the DOR to use sale price as an indication of market value, the Taxpayer must follow Mont. Admin R. 42.20.454 (a-f), because the Taxpayer failed to meet the requirements; the Board cannot use the recent sale price as an indication of market value.
35. 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.
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.

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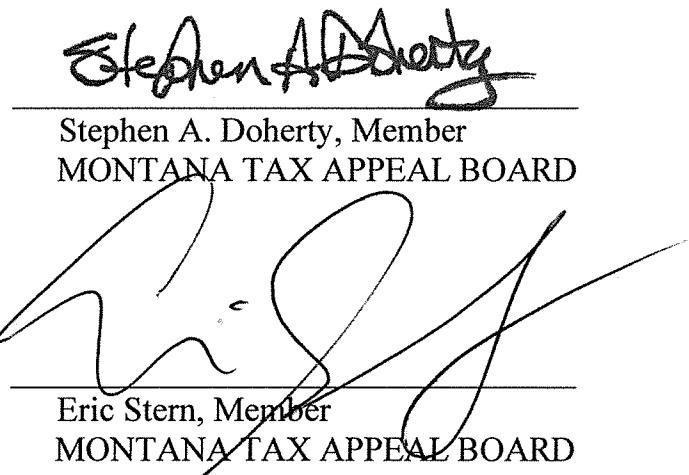
**ORDER**

37. Smythe Family LLLP's appeal and complaint is denied in part.
38. DOR is ordered to set the value of the property at \$72,690 for 2019/2020 tax years.

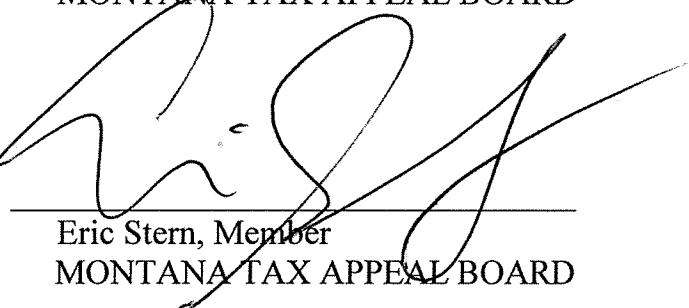
Ordered November 17, 2020



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