

**BEFORE THE STATE BOARD OF EQUALIZATION**

**FOR THE STATE OF WYOMING**

IN THE MATTER OF THE APPEAL OF	)	
<b>DANIEL STANLEY GORGOL</b> FROM	)	
A DECISION OF THE PARK COUNTY	)	Docket No. <b>2009-109</b>
BOARD OF EQUALIZATION - 2009	)	
PROPERTY VALUATION	)	

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**DECISION AND ORDER**

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**APPEARANCES**

Daniel Stanley Gorgol (Taxpayer) appeared pro se.

Doug Brandt, Park County Assessor (Assessor), appeared pro se.

**DIGEST**

Taxpayer appealed from a Park County Board of Equalization (County Board) decision dated July 28, 2009, affirming the Assessor's valuation of Taxpayer's property for 2009 tax purposes. Taxpayer's Notice of Appeal was filed with the State Board of Equalization (State Board) effective August 20, 2009. The Taxpayer filed a letter with the State Board on November 12, 2009, in response to the State Board's October 26, 2009, Briefing Order. The Assessor requested the State Board rely on the County Board Record by letter dated December 28, 2009. Neither party requested oral argument.

The State Board, comprised of Thomas D. Roberts, Chairman, Steven D. Olmstead, Vice-Chairman, and Deborah J. Smith, Board Member, considered Taxpayer's Notice of Appeal and November 12, 2009, letter, the Assessor's December 28, 2009, letter requesting the State Board rely on the County Board Record, the County Board Record, and the decision of the County Board.

We evaluate Taxpayer's appeal against our standard of review, which is whether the County Board decision was arbitrary, capricious, unsupported by substantial evidence, and/or contrary to law. *Rules, Wyoming State Board of Equalization, Chapter 3 § 9.*

We affirm the County Board decision.

## **ISSUES**

Taxpayer asserts his “property is assessed at a much greater value than [his] neighbors['] properties of equal or greater value. I am only seeking to be treated equally under the law.” [*Taxpayer letter filed November 12, 2009.*]

The Assessor relies on the County Board record, in effect arguing the County Board decision was supported by substantial evidence and was not arbitrary, capricious or contrary to law. [*Assessor letter filed December 28, 2009.*]

Taxpayer, in order to prevail on appeal, must establish the County Board decision was not supported by substantial evidence, and/or the County Board acted unlawfully, arbitrarily, and capriciously in affirming the Assessor’s value of Taxpayer’s property for 2009 tax purposes.

## **PROCEEDINGS BEFORE THE COUNTY BOARD**

The County Board conducted a hearing on July 22, 2009, at which Taxpayer and Pat Meyer, Deputy Park County Assessor, each testified and presented exhibits. The County Board entered its Final Decision dated July 28, 2009, affirming the Assessor’s 2009 fair market value for Taxpayer’s property. [County Board Record, pp. 41-49]. The County Board Final Decision was mailed to Taxpayer on July 28, 2009. [County Board Record, p. 50].

## **JURISDICTION**

The State Board is required to “hear appeals from county boards of equalization.” *Wyo. Stat. Ann. § 39-11-102.1(c)*. Taxpayer filed a timely appeal of the July 28, 2009, County Board decision with the State Board effective August 20, 2009. *Rules, Wyoming State Board of Equalization, Chapter 3 § 2*.

## **STANDARD OF REVIEW**

When the State Board hears appeals from a county board of equalization, it acts as an intermediate level of appellate review. *Laramie County Board of Equalization v. Wyoming State Board of Equalization*, 915 P.2d 1184, 1188 (Wyo. 1996); *Union Pacific Railroad*

*Company v. Wyoming State Board of Equalization*, 802 P.2d 856, 859 (Wyo. 1990). In its appellate capacity, the State Board treats the county board of equalization as the finder of fact. *Id.* In contrast, the State Board acts as the finder of fact when it hears contested cases on appeal from final decisions of the Department of Revenue (Department). *Wyo. Stat. Ann. § 39-11-102.1(c)*. This sharp distinction in roles is reflected in the State Board Rules governing the two different types of proceedings. *Compare Rules, Wyoming State Board of Equalization, Chapter 2 with Rules, Wyoming State Board of Equalization, Chapter 3*. Statutory language first adopted in 1995, when the State Board and the Department were reorganized into separate entities, does not express the distinction between the State Board’s appellate and de novo capacities with the same clarity as our long-standing Rules. *1995 Wyo. Sess. Laws, Chapter 209, § 1; Wyo. Stat. Ann. § 39-1-304(a), (currently Wyo. Stat. Ann. § 39-11-102.1(c))*.

By Rule, the State Board standards for review of a county board of equalization decision are nearly identical to the Wyoming Administrative Procedure Act standards which a district court must apply to hold unlawful and set aside agency action, findings of fact, and conclusions of law. *Compare Rules, Wyoming State Board of Equalization, Chapter 3 § 9 with Wyo. Stat. Ann. § 16-3-114(c)(ii)*. Unlike a district court, however, the State Board will not rule on claims a county board of equalization acted “[c]ontrary to constitutional right, power, privilege or immunity.” *Wyo. Stat. Ann. § 16-3-114(c)(ii)(B)*. The State Board’s review is limited to a determination of whether a county board of equalization action was:

- (a) Arbitrary, capricious, an abuse of discretion or otherwise not in accordance with law;
- (b) In excess of statutory jurisdiction, authority or limitations or lacking statutory right;
- (c) Without observance of procedure required by law; or
- (d) Unsupported by substantial evidence.

*Rules, Wyoming State Board of Equalization, Chapter 3 § 9.*

Since the State Board Rules are patterned on the judicial review provision of the Wyoming Administrative Procedure Act, we look to precedent under Wyo. Stat. Ann. § 16-3-114(c) for guidance. For example, we must apply this substantial evidence standard:

When [a person] challenges a [county board]’s findings of fact and both parties submitted evidence at the contested case hearing, we examine the entire

record to determine if the [county board]'s findings are supported by substantial evidence. *Colorado Interstate Gas Co. v. Wyoming Department of Revenue*, 2001 WY 34, ¶ 8, 20 P.3d 528, 530 (Wyo.2001); *RT Commc'ns, Inc. v. State Bd. of Equalization*, 11 P.3d 915, 920 (Wyo.2000). If the [county board]'s findings of fact are supported by substantial evidence, we will not substitute our judgment for that of the [county board] and will uphold the factual findings on appeal. “Substantial evidence is more than a scintilla of evidence; it is evidence that a reasonable mind might accept in support of the conclusions of the agency.” *Id.*

*Chevron U.S.A., Inc. v. Department of Revenue*, 2007 WY 79, ¶ 9, 158 P.3d 131, 134 (Wyo. 2007).

We review the findings of ultimate fact of a county board of equalization de novo:

“When an agency’s determinations contain elements of law and fact, we do not treat them with the deference we reserve for findings of basic fact. When reviewing an ‘ultimate fact,’ we separate the factual and legal aspects of the finding to determine whether the correct rule of law has been properly applied to the facts. We do not defer to the agency’s ultimate factual finding if there is an error in either stating or applying the law.” *Basin Elec. Power Co-op., Inc. v. Dep’t of Revenue, State of Wyo.*, 970 P.2d 841, 850-51 (Wyo. 1998)(citations omitted).

*Britt v. Fremont County Assessor*, 2006 WY 10, ¶ 17, 126 P.3d 117, 123 (Wyo. 2006).

We must also apply this “arbitrary and capricious” standard:

Even if sufficient evidence is found to support the agency’s decision under the substantial evidence test, this [Board] is also required to apply the arbitrary-and-capricious standard as a “safety net” to catch other agency action which might have violated the Wyoming Administrative Procedures Act. *Decker v. Wyoming Medical Comm’n*, 2005 WY 160, ¶ 24, 124 P.3d 686, 694 (Wyo. 2005). “Under the umbrella of arbitrary and capricious actions would fall potential mistakes such as inconsistent or incomplete findings of fact or any violation of due process.” *Id.* (quoting *Padilla v. State ex rel. Wyoming Workers’ Safety and Comp. Div.*, 2004 WY 10, ¶ 6, 84 P.3d 960, 962 (Wyo. 2004)).

*State ex rel. Wyoming Workers' Safety and Comp. Div. v. Madeley*, 2006 WY 63, ¶ 8, 134 P.3d 281, 284 (Wyo. 2006).

### **FACTS PRESENTED TO THE COUNTY BOARD**

1. Taxpayer owns real property and improvements located at 1796 Southfork Road in Park County, Wyoming. Taxpayer's property includes 11.173 acres of land and a residence, utility building, and horse barn. The property overlooks the Southfork River but does not have river frontage. [County Board Record, Exhibit 6, pp. 26-29; Audio Recording].

2. Taxpayer's residence is a one story, ranch style house built in 1996. It has 3,050 square feet of living area on the main floor, a 1,457 square-foot basement of which 1,147 square feet is finished, a 696 square-foot attached garage, one enclosed porch, one covered porch, and a flagstone patio. It has central air conditioning, frame siding, interior drywall, gable roof with wood shake shingles, two fireplaces, and four bathrooms. Taxpayer's house is rated by the Assessor as of "Good Plus" quality and "Very Good" condition. The utility building, built in 1995, is 1,526 square feet and has a 3/4 bath. The horse barn, built in 1999, is 1,440 square feet. [County Board Record, Exhibit 6, pp. 25-29; Audio Recording].

3. Mr. Gorgol purchased the property in 1999 for \$515,000 and added the horse barn and fencing after purchase. [County Board Record, Audio Recording].

4. Mr. Gorgol testified his property was offered for sale in either 2006 or 2007, while divorce proceedings between he and his former spouse were pending. The initial asking price for the property was \$625,000. Mr. Gorgol reported only three persons viewed the property while it was for sale; and the only offer fell through. Ultimately, the asking price was reduced to \$500,000. When the property did not sell, he purchased his ex-wife's interest as part of the divorce settlement. Mr. Gorgol stated the fair market value set by the Assessor for 2008 tax purposes, \$545,000, was used to value the property for purposes of the divorce settlement. [County Board Record, Audio Recording]. The 2008 fair market value listed on the 2009 Notice of Assessment was \$554,258 rather than \$545,000. [County Board Record, p. 3; Exhibit 1, p. 19].

5. The Assessor initially set the 2009 fair market value for Taxpayer's real property and improvements at \$615,949, \$101,993 for the real property and \$513,956 for the improvements. The Assessor mailed Taxpayer a "2009 Notice of Assessment" on April 3, 2009. [County Board Record, p. 3; Exhibit 1, p. 19].

6. Taxpayer contested the Assessor's fair market value determination by filing a "Statement to Contest Property Tax Assessment" dated May 4, 2009. [County Board Record, pp. 1-2].

7. After Taxpayer contested the Assessor's valuation for 2009, the Assessor's office reviewed the information used to value Taxpayer's property and discovered an error. [County Board Record, Audio Recording]. The Assessor corrected the error, and sent Taxpayer a "2009 Amended Notice of Assessment" dated June 17, 2009. The amended notice reduced the fair market value of Taxpayer's improvements from \$513,956 to \$501,640, resulting in a revised fair market value of \$603,633 for Taxpayer's real property and improvements. [County Board Record, p. 3; Exhibit 1, p. 19; Exhibit 2, p. 20; Audio Recording].

8. Mr. Gorgol maintained his protest after receiving the Amended Notice of Assessment. He asserted surrounding houses with similar acreage were being assessed at significantly lower values than his property, even though they were nicer than his home and were located on the river while his property was on a hillside with no river frontage and some unusable swamp land. [County Board Record, Audio Recording].

9. At the hearing, Mr. Gorgol stated he had complained to the Assessor about his property being overvalued the last couple of years, and was surprised when the 2009 Notice of Assessment for his property reflected a \$75,000 increase in fair market value to \$615,949 in a down economy. [County Board Record, Audio Recording]. Mr. Gorgol was concerned he was being overtaxed compared to his neighbors and did not feel he was being treated equally. [County Board Record, Audio Recording].

10. Mr. Gorgol discussed four neighboring properties during the County Board hearing to support his contention his property was overvalued when compared to his neighboring properties. He characterized each of the neighboring properties as equal to or far better than his property based on their location and his personal observations. [County Board Record, Audio Recording].

11. The first property discussed by Mr. Gorgol was located on the river. He considered the location better than his property because it was not on the hillside and didn't have a swampy area. Mr. Gorgol considered the residence comparable to his residence. The property was valued by the Assessor at \$466,936. Mr. Gorgol provided the property data screen printout from the Assessor which showed the property was 12.04 acres with a 2,553 square-foot, one and one-half story home built in 1986, and an effective age of 15 years. The Assessor rated the quality of construction as "Good Plus" and the condition as "Very Good." The house had forced air heating, exterior frame siding, interior drywall, a composition

shingle hip/gable roof, two baths, one fireplace, two covered porches, a 702 square-foot attached garage, and a 550 square-foot concrete slab. The Assessor's 2009 fair market value was \$145,746 for the land and \$321,190 for the improvements, for a total fair market value of \$466,936. [County Board Record, Exhibit A, p. 16; Audio Recording].

12. The second property discussed by Mr. Gorgol consisted of 40 acres of flat land and a house. He considered the residence comparable to his residence. Mr. Gorgol provided the property data screen printout from the Assessor which showed the property was 40.83 acres. The house was listed as a 2,362 square-foot one story, ranch style house with 1,024 square-foot finished basement, built in 1986, and an effective age of 15 years. The Assessor rated the quality of construction as Good and the condition as Very Good. The house had forced air heat, a wood burning stove, exterior frame siding, interior drywall, composition shingle hip/gable roof, two baths, an 808-square-foot attached garage, a 36 square-foot covered porch and a 700 square-foot concrete slab. The 2009 assessed fair market value was \$250,541 for the land and \$281,776 for the improvements, for a total fair market value of \$532,317. [County Board Record, Exhibit B, p. 17; Audio Recording].

13. The third property discussed by Mr. Gorgol was slightly larger, with 11.67 acres on the river, and a house described by Mr. Gorgol as beautiful. Mr. Gorgol testified the property was of special interest because it was for sale at the same time his property was on the market and sold for \$630,000. Mr. Gorgol provided the property data screen printout from the Assessor which showed the property was 11.67 acres with a 2,828 square-foot one story, ranch style house with a 1,400 square-foot basement, built in 1975, and remodeled in 1991 for an effective age of 20 years. The Assessor rated the quality of construction as "Good" and the condition as "Good." The house had forced air heat, frame siding, interior drywall, wood shake hip/gable roof, two fireplaces, two baths, a 576 square-foot attached garage, 1,147 square-foot wood deck, and two concrete slabs totaling 755 square feet. The 2009 assessed fair market value was \$144,399 for the real property and \$434,128 for the improvements, for a total fair market value of \$578,527. [County Board Record, Exhibit C, p. 18; Audio Recording].

14. Mr. Gorgol also testified about a fourth property on the same side of Southfork Road as his property. He described it as 12 acres of hay field, with a beautiful home sitting on top of the hill. The improvements included a house with approximately 2300 to 2400 square feet of living area and a couple of barns. Mr. Gorgol testified the property was valued by the Assessor at \$505,000. He did not understand why his property was valued so much higher in comparison. [County Board Record, Audio Recording]. Mr. Gorgol did not provide the property data screen printout from the Assessor for this property.

15. The Park County Assessor was represented by Pat Meyer, Deputy County Assessor, who testified at the County Board hearing. Mr. Meyer had been the Deputy County Assessor for the past 24 years. He had been a State of Wyoming Certified Tax Appraiser since 1989 and has attended 1,300 hours of continuing education. [County Board Record, Audio Recording].

16. Mr. Meyer stated the 2009 fair market value for Taxpayer's property was originally set by the Assessor at \$615,949. [County Board Record, Exhibit 1, p. 19; Audio Recording]. He explained the fair market value of Taxpayer's property increased from 2008 to 2009 because of changes made in the Assessor's records to reflect property characteristics found during a review of Taxpayer's property in 2008. The changes affecting the value of Taxpayer's property included the addition of central air conditioning, a 3/4 bath, basement finish, jetted bathtub, and concrete driveway pad. These changes in the information used to value the property increased its fair market value for 2009. [County Board Record, Audio Recording]. Taxpayer did not disagree with the characteristics used by the Assessor in valuing his property.

17. Mr. Meyer explained the original fair market value was subsequently reduced by the Assessor's office after a typographical error was discovered and corrected. The revised fair market value for 2009 was reduced to \$603,633. [County Board Record, Exhibit 2, p. 20; Audio Recording].

18. Mr. Meyer explained the mass appraisal process used to value residential property in Park County for tax purposes. The Assessor used a computer assisted mass appraisal (CAMA) system provided by the Department of Revenue for the mass appraisal process. [County Board Record, Audio Recording]. He described the steps as follows:

A. The appraiser first determines the fair market value of the land by using the sales comparison approach within a given Land Economic Area (LEA) by identifying vacant lands of similar size and location to the property being appraised. Sales comparison approach is used to establish a price per acre or price per square foot. When prices are established they will then be added to the improvement value to produce a total fair market value for assessment purposes.

B. Field appraisers gather information on each property, including house square footage, garages, condition, bathrooms, etc.

C. The collected information is entered into the CAMA system which calculates a replacement cost new (RCN). The CAMA system uses labor and material costs which are updated annually.



D. The replacement cost new value is then adjusted for depreciation based on the remaining life of the structure and its condition. The depreciation is subtracted from the replacement cost new to determine the replacement cost new less depreciation (RCNLD) for a structure.

E. The Assessor then adjusts the replacement cost new less depreciation (RCNLD) to account for market conditions. The Assessor monitors sales and compares the reported sale prices from statements of consideration to the Assessor's 2009 replacement cost new less depreciation plus land value for the properties sold. By comparing these values the assessor determines an average percent above or below the replacement cost new less depreciation that buyers were paying for property in an area. The Assessor applies the percentage to all residential improved properties in the given neighborhood to arrive at a fair market value for each property.

[County Board Record, Exhibit 3, p. 21; Audio Recording].

19. Mr. Meyer explained Mr. Gorgol's property was in a different neighborhood than properties on the river, and was valued less per acre than the properties on the river. [County Board Record, Audio Recording].

20. Mr. Meyer explained the Assessor used sales ratio studies to test the accuracy and uniformity of the assessments. The 2009 sales valuation worksheet for Southfork properties contained 26 valid 2008 residential property sales. He testified the analysis showed a median ratio of 95.9088 and a coefficient of dispersion (COD) for this grouping of 8.8500, indicating the dispersion of values is within 8%. Mr. Meyer asserted the analysis established the 20% market adjustment applied by the Assessor to the RCNLD of all properties sold in Southfork resulted in fair market value within 5% of the full selling price, allowing for an 8% error on either side of exactly 100% of the selling prices. [County Board Record, Exhibit 4, p. 22; Audio Recording].

21. Mr. Meyer also testified concerning a Sales Valuation Worksheet which contained 60 valid sales from 2007 and 2008 for Mr. Gorgol's neighborhood. The analysis showed a mean ratio of 94.9512 and a median ratio of 96.8053 which indicated the Assessor's fair market value for sold properties was within 96% of the selling prices for the properties sold during the 2007 and 2008. [County Board Record, Exhibit 5, pp. 23-24; Audio Recording].

22. Mr. Meyer manually calculated the replacement cost new less depreciation for Mr. Gorgol's property using the Marshal and Swift Manual and Mr. Gorgol's property characteristics. He priced the interior and exterior characteristics and arrived at a final value of \$466,222 for Mr. Gorgol's property. [County Board Record, Exhibit 6, 25-30; Audio

Recording]. The calculated amount corresponded to the RCNLD displayed in the CAMA system for Taxpayer's property. [County Board Record, Exhibit 6, pp. 25-30, Compare "Final Value," p. 28, with "RCNLD," p. 29]. Mr. Meyer stated the manual calculation demonstrated the CAMA system priced properties correctly, and Mr. Gorgol was treated the same as his neighbors. [County Board Record, Audio Recording].

23. Mr. Meyer explained the differences between Mr. Gorgol's property and three of the properties Mr. Gorgol identified as equal to or better than his property. [County Board Record, Audio Recording].

24. The first property, *supra*, ¶ 11, consisted of 12.04 acres of land, valued at \$12,105 per acre. Mr. Meyer explained Mr. Gorgol's land was valued less, at \$9,130 per acre, because of differences in desirability and location. The first property's residence contained 2,553 square feet of living area, and was one and one-half story construction, meaning the costs for a foundation and roof was less than for a ranch style house. The house was built in 1986, with 15% depreciation, and had one fireplace, two baths, an attached garage, and a couple of porches. In contrast, Mr. Gorgol's house was newer with less depreciation, 9%, had two more bathrooms, an enclosed porch, and additional fireplace. Mr. Meyer stated these additional characteristics account for the difference in fair market value between the properties. He noted in particular the difference in size between the houses, characterizing the additional square footage of Mr. Gorgol's house, 1,644 square feet, as close to the size of another house. [County Board Record, Exhibit 6, pp. 25-30; Exhibit 7, pp.31-36; Exhibit 8, p. 37; Audio Recording].

25. Mr. Meyer compared the second property Mr. Gorgol discussed, *supra*, ¶ 12, with Mr. Gorgol's property. The second property contained 40 acres of land valued at \$105,560 for the first acre and \$3,640 for each additional acre. Mr. Meyer noted Mr. Gorgol's house was newer, contained 1,835 more square feet of living area, two more bathrooms, a fireplace, an enclosed porch, and outbuildings. [County Board Record, Exhibit 6, pp. 25-30; Exhibit 9, p. 38; Audio Recording].

26. The third property identified by Mr. Gorgol as comparable to his property, *supra*, ¶ 13, was also discussed by Mr. Meyer. Mr. Meyer noted the land on the river was valued higher than Mr. Gorgol's property at \$12,373 per acre. Mr. Gorgol's house was newer, had 1,369 more square feet of living area, two more bathrooms, and an enclosed porch, all which enhanced the fair market value of Mr. Gorgol's property. [County Board Record, Exhibit 6, pp. 25-30; Exhibit 10, pp. 39-40; Audio Recording].

27. Mr. Meyer did not discuss the fourth property identified by Mr. Gorgol, *supra*, ¶ 14, because it had not been identified in Mr. Gorgol's exhibits prior to the County Board hearing. [County Board Record, Audio Recording].

## **DISCUSSION OF ISSUES AND APPLICABLE LAW**

28. The State Board is authorized to "hear appeals from county boards of equalization." *Wyo. Stat. Ann. § 39-11-102.1(c)*. Taxpayer filed a timely appeal of the County Board decision with the State Board effective August 20, 2009. *Rules, Wyoming State Board of Equalization, Chapter 3 § 2*.

### **General Principles**

29. The Wyoming Constitution article 15, § 11(b), provides in pertinent part: "[a]ll taxable property shall be valued at its full value as defined by the legislature except agricultural and grazing lands which shall be valued according to the capability of the land to produce agricultural products under normal conditions."

30. The Wyoming Constitution article 15, § 11(d), requires "[a]ll taxation shall be equal and uniform within each class of property. The legislature shall prescribe such regulations as shall secure a just valuation for taxation of all property, real and personal."

31. Broken into its component parts, the constitutional standard requires: (1) a rational method; (2) equally applied to all property; and (3) essential fairness. It is the burden of one challenging an assessment to prove by a preponderance of the evidence that at least one of these elements has not been fulfilled. *Basin Electric Power Coop. v. Dept. of Revenue*, 970 P.2d 841, 852 (Wyo.1998).

32. The Legislature has required all property in Wyoming to be valued annually at fair market value. *Wyo. Stat. Ann. § 39-13-103(b)(ii)*. The statutory valuation date is January 1 of each year; all taxable property must be valued and assessed for taxation in the name of the owner of the property on that date. *Wyo. Stat. Ann. § 39-13-103(b)(i)*.

33. Fair market value is defined as:

[T]he amount in cash, or terms reasonable equivalent to cash, a well informed buyer is justified in paying for a property and a well informed seller is justified in accepting, assuming neither party to the transaction is acting under undue

compulsion, and assuming the property has been offered in the open market for a reasonable time.

*Wyo. Stat. Ann. § 39-11-101(a)(vi).*

34. Each county assessor annually determines the fair market value of residential real property within their county. *Wyo. Stat. Ann. §§ 18-3-204(a)(i), (ii), (vi); 39-13-103(b)(i).* In so doing, the assessor must “[f]aithfully and diligently follow and apply the orders, procedures and formulae of the department of revenue or orders of the state board of equalization for the appraisal and assessment of all taxable property.” *Wyo. Stat. Ann. § 18-3-204(a)(ix).*

35. The Department has a corresponding statutory obligation to confer with, advise and give necessary instructions and directions to the county assessors as to their duties, and to promulgate rules and regulations necessary for the enforcement of all tax measures. *Wyo. Stat. Ann. § 39-11-102(c)(xvi), (xix).* The Department is required to “[p]rescribe the system of establishing the fair market value of all property valued for property taxation to ensure that all property within a class is uniformly valued.” *Wyo. Stat. Ann. § 39-11-102(c)(xv).* In particular, the Department must “prescribe by rule and regulation the appraisal methods and systems for determining fair market value using generally accepted appraisal standards.” *Wyo. Stat. Ann. § 39-13-103(b)(ii).*

36. The Department has promulgated rules which establish appraisal techniques which may be used by an assessor. *Rules, Wyoming Department of Revenue, Chapter 9 § 6.* These techniques include the Sales Comparison Approach, the Cost Approach, and the Income or Capitalized Earnings Approach. *Rules, Wyoming Department of Revenue, Chapter 9 § 6(a.), (b.), (c).* The Department Rules also include a number of definitions pertinent to this matter, including “Appraisal Foundation” and “Replacement Cost.” *Rules, Wyoming Department of Revenue, Chapter 9 §§ 4(g.); 6(b.) (v.) (F.).* Administrative rules have the force and effect of law. *Wyo. Dep’t of Revenue v Union Pacific Railroad Co.*, 2003 WY 54, ¶ 18, 67 P.3d 1176, 1184 (Wyo. 2003); *Painter v. Abels*, 998 P.2d 931, 939 (Wyo. 2000).

37. The Department’s Rules provide for use of a CAMA system. *Rules, Wyoming Department of Revenue, Chapter 9 § 6(d).* CAMA “automates the comparable sales and replacement cost methods.” *Britt v. Fremont County Assessor*, 2006 WY 10, ¶ 39, 126 P.3d 117, 128 (Wyo. 2006).

38. By rule, the Department has defined its own additional and independent responsibility to monitor the assessors’ use of CAMA systems:

(i) Annually, the Ad Valorem Tax Division shall monitor each Wyoming county to discuss and ensure utilization of the Department approved CAMA systems and compliance with all Department directives and orders with regard to appraisal method and valuation methodologies. The results shall be compiled by identifying current issues of concern and presented to the Department of Revenue Director no later than January 31<sup>st</sup>.

*Rules, Wyoming Department of Revenue, Chapter 9 § 6(e.)&(i.).*

39. The Department also prescribes how the various valuation methods are to be evaluated and utilized by an assessor:

Section 6. Appraisal Methods. The appraisal techniques which may be used by the County Assessor or the Ad Valorem Tax Division under written agreement with a county include the approaches described in this section. Each approach used shall be an appropriate method for the type of property being valued; that is, the property shall fit the assumptions inherent in the appraisal method in order to calculate or estimate the fair value of the property. Each approach used shall also consider the nature of the property or industry, and the regulatory and economic environment within which the property operates.

*Rules, Wyoming Department of Revenue, Chapter 9 § 6.*

40. In valuing real property and improvements for tax purposes, an assessor must take into consideration depreciation. *Rules, Wyoming Department of Revenue, Chapter 9 § 6(b.) (iv.).* Depreciation is defined as:

(d.) "Depreciation" means a loss of utility and hence value from any cause. Depreciation may take the form of physical depreciation, functional obsolescence, or economic obsolescence.

(i.) "Physical Depreciation" means the physical deterioration as evidenced by wear and tear, decay or depletion of the property.

(ii.) "Functional Obsolescence" means the impairment of functional capacity or efficiency, which reflects a loss in value brought about by such factors as defects, deficiencies, or super adequacies, which affect the property item itself or its relation with other items comprising a larger property.

(iii.) "Economic Obsolescence" means impairment of desirability or useful life arising from factors external to the property, such as economic forces or environmental changes which affect supply-demand relationships in

the market. The methods to measure economic obsolescence may include, but are not limited to:

(A.) Capitalization of the income or rent loss attributable to the negative influence;

(B.) Comparison of sales of similar properties which are subject to the negative influence with others which are not.

*Rules, Wyoming Department of Revenue, Chapter 9 § 4(d).*

41. An assessor is also required to take into consideration appreciation. *Rules, Wyoming Department of Revenue, Chapter 9 § 6(b.)(ii).* Appreciation is defined as “an increase in value due to an increase in cost to reproduce, value over the cost, or value at some specified earlier point in time, brought about by greater demand, improved economic conditions, increasing price levels, reversal of depreciating environmental trends, or other factors as defined in the market.” *Rules, Wyoming Department of Revenue, Chapter 9 § 6(b.)(v.)(A).*

### **The Presumption in Favor of an Assessor’s Value**

42. The determination of fair market value inevitably involves a degree of discretion:

Early on, Justice Blume recognized a truth inherent in the area of property valuation: “There is no such thing as absolute value. A stone cannot be other than a stone, but one man may give a different valuation to a piece of land than another.” *Bunten v. Rock Springs Grazing Ass’n*, 29 Wyo. 461, 475, 215 P. 244, 248 (1923). Accordingly, this court has consistently interpreted Wyo. Const. art. 15, § 11 to require “only a rational method [of appraisal], equally applied to all property which results in essential fairness.”

*Basin Electric Power Coop. v. Dept. of Revenue*, 970 P.2d 841, 857 (Wyo.1998) quoting *Holly Sugar Corp. v. State Board of Equalization*, 839 P.2d 959, 964 (Wyo.1992). The Wyoming Supreme Court has recently reiterated the “rational method” standard. *Britt v. Fremont County Assessor*, 2006 WY 10, ¶ 18, 126 P.3d 117, 123 (Wyo. 2006).

43. An assessor’s valuation is presumed valid, accurate, and correct. This presumption survives until overturned by credible evidence. *Britt v. Fremont County Assessor*, 2006 WY 10, ¶ 23, 126 P.3d 117, 125 (Wyo. 2006); *Thunder Basin Coal Company v. Campbell County, Wyoming Assessor*, 2006 WY 44, ¶ 13, 132 P.3d 801, 806 (Wyo. 2006); *Teton Valley Ranch v. State Board of Equalization*, 735 P.2d 107, 113 (Wyo. 1987). A mere difference of opinion as to value is not sufficient to overcome the presumption. *J Ray McDermott & Co. v. Hudson*, 370 P.2d 364, 370 (Wyo. 1962); *Thunder Basin Coal Company v. Campbell*

*County, Wyoming Assessor*, 2006 WY 44, ¶¶ 13, 48, 132 P.3d 801, 806, 816 (Wyo. 2006). The presumption is especially valid where the Assessor valued the property according to the Department's Rules and Regulations which provide for the use of the CAMA system in the assessment of real property. *Rules, Wyoming Department of Revenue, Chapter 9 § 6(b.) & (d.)*. "The burden is on the taxpayer to establish any overvaluation." *Hillard v. Big Horn Coal Co.*, 549 P.2d 293, 294 (Wyo. 1976).

44. The Wyoming Supreme Court has described the burden of proof for a taxpayer challenging a county assessor's valuation:

A strong presumption favors the Assessor's valuation. "In the absence of evidence to the contrary, we presume that the officials charged with establishing value exercised honest judgment in accordance with the applicable rules, regulations, and other directives that have passed public scrutiny, either through legislative enactment or agency rule-making, or both." *Amoco Production Co. v. Dept. of Revenue*, 2004 WY 89, ¶ 7, 94 P.3d 430, 435 (Wyo. 2004). The Britts [i.e., the protesting taxpayers] had the initial burden of presenting evidence sufficient to overcome the presumption. *Id.*, ¶ 8. If the Britts successfully overcame the presumption, then the county board was "required to equally weigh the evidence of all parties and measure it against the appropriate burden of proof." *CIG v. Wyoming Dept. of Revenue*, 2001 WY 34, ¶ 10, 20 P.3d 528, 531 (Wyo. 2001). The burden of going forward would then have shifted to the Assessor to defend her valuation. *Id.* Above all, the Britts bore "the ultimate burden of persuasion to prove by a preponderance of the evidence that the valuation was not derived in accordance with the required constitutional and statutory requirements for valuing . . . property." *Id.*

*Britt, supra*, 2006 WY 10, ¶ 23, 126 P.3d at 125.

45. The Wyoming Supreme Court has recognized the validity of valuations derived from the CAMA system. *Gray v. Wyoming State Board of Equalization*, 896 P.2d 1347 (Wyo. 1995), *Britt v. Fremont County Assessor*, 2006 WY 10, ¶ 17, 126 P.3d 117, 123 (Wyo. 2006). In fact, the Wyoming Supreme Court rejected the use of actual sales price for properties in favor of the value established by the CAMA system because of the equality and uniformity which result from its use. *Gray, supra*, at 1351.

46. Our evaluation of this appeal turns primarily on the question of whether there is substantial evidence in the record which reasonably supports the County Board's decision. In determining whether the required substantial evidence is present, the State Board will not

substitute its judgement for findings reasonably supported by evidence in the County Board record. *Laramie County Board of Equalization v. State Board of Equalization*, 915 P.2d 1184, 1188-1189 (Wyo. 1996); *Holly Sugar Corp. v. Wyoming State Board of Equalization*, 839 P.2d 959 (Wyo. 1992); *Sage Club, Inc. v. Employment Sec. Comm'n.*, 601 P.2d 1306, 1310 (Wyo. 1979). While substantial evidence may be less than the weight of the evidence, it cannot be clearly contrary to the overwhelming weight of the evidence. The Wyoming Supreme Court has stated “[s]ubstantial evidence is a term of art best described as relevant evidence that a reasonable mind can accept as adequate support for an agency’s conclusion.” *Sidwell v. State Workers’ Compensation Div.*, 977 P.2d 60, 63 (Wyo. 1999).

### **ANALYSIS AND CONCLUSIONS OF LAW**

47. At the County Board hearing, Taxpayer argued the Assessor's 2009 fair market value of his property was too high, based primarily on a comparison of the assessed value of his property to the assessed values of neighbors’ properties, and on his inability to sell his property two to three years prior to the County Board hearing. *Supra*, ¶¶ 4, 8, 10-14. Taxpayer suggested it was not fair and equitable to value his property at a higher fair market value than his neighbors’ properties, which he characterized as nice as or nicer than his property. *Supra*, ¶ 8.

48. The County Board ruled in favor of the Assessor, finding Taxpayer’s property had been valued in accordance with applicable standards using the CAMA system. The County Board concluded: “Petitioner has failed to prove by a preponderance of the evidence that the Assessor’s office either 1) failed to use a rational method, 2) failed to equally apply the method to all properties; or 3) unfairly applied the method to Petitioner’s property. Therefore, the [Taxpayer] has not overcome the presumption of regularity of the County Assessor tax assessment for the subject matter property, and the Park County Board of Equalization upholds the assessed valuation for that reason.” [County Board Record, Final Decision, pp. 41-49].

49. Taxpayer’s evidence at the County Board hearing consisted primarily of comparisons of the valuations of neighboring properties to his property. *Supra*, ¶¶ 4, 10-14. From the comparisons of property values, Taxpayer argued his property was over assessed. Taxpayer’s evidence, however, did not include information on the size of the houses, percent of finish, or other characteristics for the neighboring properties from which a valid comparison with the characteristics of Taxpayer’s property could be made. For properties to be relevant as comparables under a sales comparison approach, they must “be adjusted to reflect differences in time, location, size, physical attributes, financing terms or other differences which affect



value.” *Rules, Wyoming Department of Revenue, Chapter 9 § 6(a).* No adjustments reflecting the properties’ differences was offered by Taxpayer.

50. The Assessor’s representative provided specific evidence of the different characteristics affecting the value of Taxpayer’s property. The characteristics identified by the Assessor, which distinguish Taxpayer’s property from his neighbors’ properties, and support the County Board decision, included the size of Taxpayer’s house, between 500 and 1800 square feet larger than his neighbors’ houses; the age of Taxpayer’s house, newer; and the additional characteristics of Taxpayer’s house, including additional bathrooms, fireplace, and enclosed porch. *Supra*, ¶¶ 1, 2, 16, 24-27, 40, 41. The information provided by the Assessor was sufficient to support the County Board conclusion that Taxpayer’s property was significantly better than the other properties discussed by Taxpayer. Taxpayer’s analysis was, at best, simply a recitation of the values of other properties Taxpayer selected which was not sufficient to overcome the presumption in favor of an assessor’s valuation. *Supra*, ¶¶ 44, 45.

51. Taxpayer also emphasized the location of the neighbors’ properties on the river as better than his location, suggesting his property was overvalued because of its inferior location. The Assessor’s representative testified regarding how real property was valued. He explained Taxpayer’s land was in a different neighborhood than land on the river and was valued at a lower fair value than the properties on the river. He specifically discussed the two properties on the river identified by Taxpayer. The properties on the river were valued by the Assessor at \$12,105 per acre and \$12,373 per acre. Taxpayer’s property above the river was valued at \$9,130 per acre. Mr. Meyer’s testimony is substantial evidence supporting the County Board decision, and contradicts Taxpayer’s assertion his property was overvalued because of its location. *Supra*, ¶¶ 24, 26, 40, 41.

52. Mr. Gorgol did not disagree with the changes made by the Assessor’s office to his property’s characteristics in 2008, or identify any errors in the characteristics used by the Assessor in valuing his house. *Supra*, ¶ 16.

53. The characteristics of Taxpayer’s house were used by the CAMA system to calculate its Replacement Cost New Less Depreciation (RCNLD). The accuracy of this calculated value was confirmed by Mr. Meyer’s manual calculations. The Assessor then used reported sales to determine an average percentage adjustment based on a comparison of sales prices that buyers were paying for property in the area to the calculated RCNLD. The analysis resulted in a 20% market adjustment based on recent sales of comparable properties. Mr. Meyer testified this same method was applied to determine the fair market value of all residential property. *Supra*, ¶¶ 18, 22, 35–37.

54. The appraisal process described by the Assessor and used to value Taxpayer's property was a systematic, logical method of collecting, analyzing, and processing data into intelligent, well-reasoned value estimates. It met the constitutional requirement of a uniform system of valuation, equally applied resulting in essential fairness. *Supra*, ¶¶ 18, 42, 46.

55. Taxpayer did not present any evidence showing the CAMA system or its use by the Assessor was flawed. A taxpayer can not prevail by simply having an opinion contrary to that of the Assessor who values the property in compliance with the Department Rules on how property should be valued. A mere difference of opinion as to value is not sufficient to overcome the presumption in favor of the Assessor's valuation. *Supra*, ¶¶ 42, 44-46.

56. The use of the CAMA system ensures all residential real estate is valued using the same rational method. By its uniform application, the constitutional requirements of uniformity and essential fairness are met. The valuation derived by the Assessor using the CAMA system is presumed valid, accurate, and correct. *Supra*, ¶ 46. In this case, Taxpayer failed to present sufficient substantial evidence to overcome the presumption of validity in favor of the Assessor's value derived using the CAMA system. The CAMA system was a rational method, equally applied to all property, and achieved essential fairness. *Supra*, ¶ 46. The decision of the County Board was supported by substantial evidence, and therefore must be affirmed. The decision of the County Board was not unlawful, arbitrary or capricious.

57. Taxpayer suggested his property was overvalued by the Assessor by introducing evidence of his purchase price and his failure to sell the property in a prior year. Taxpayer, however, did not provide an appraisal or other independent information from which the County Board could conclude his property was overvalued by the Assessor on the assessment date, January 1, 2009. *Supra*, ¶ 32. The historical information provided by Taxpayer, by itself, was not sufficient to overcome the presumption of validity in favor of the Assessor's valuation. *Supra*, ¶¶ 44-46.

58. The decision of the County Board affirming the Assessor's valuation of Taxpayer's property is supported by substantial evidence. While Taxpayer expressed his opinion that the value of his property was too high, he did not provide an alternate, independent valuation for his property. We conclude Taxpayer failed to prove by a preponderance of the evidence the Assessor's valuation was not derived in accordance with the constitutional and statutory requirements. We further conclude, based on our review of the County Board record, the County Board decision was neither unlawful, arbitrary, nor capricious.

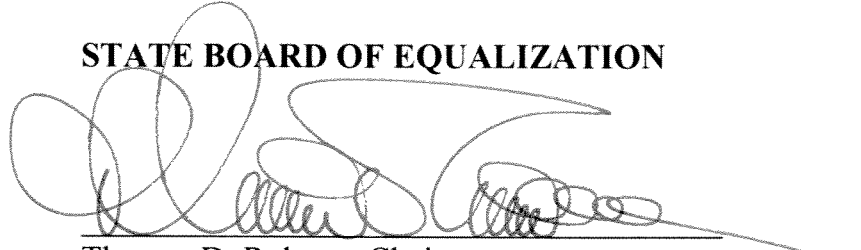
**ORDER**

**IT IS THEREFORE HEREBY ORDERED** the Park County Board of Equalization Final Decision affirming the Assessor's 2009 valuation of Taxpayer's property is **affirmed**.

**Pursuant to Wyo. Stat. Ann. §16-3-114 and Rule 12, Wyoming Rules of Appellate Procedure, any person aggrieved or adversely affected in fact by this decision may seek judicial review in the appropriate district court by filing a petition for review within 30 days of the date of this decision.**

DATED this 11<sup>th</sup> day of August, 2010.

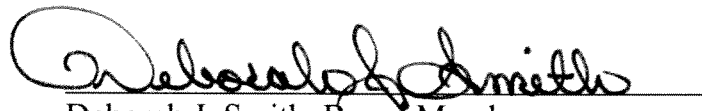
**STATE BOARD OF EQUALIZATION**



Thomas D. Roberts, Chairman




Steven D. Olmstead, Vice-Chairman



Deborah J. Smith, Board Member

**ATTEST:**




Wendy J. Soto, Executive Secretary

## CERTIFICATE OF SERVICE

I hereby certify that on the 11<sup>th</sup> day of August, 2010, I served the foregoing **DECISION AND ORDER** by placing a true and correct copy thereof in the United States Mail, postage prepaid, and properly addressed to the following:

Daniel Gorgol  
PO Box 3004  
Cody WY 82414

Doug Brandt  
Park County Assessor  
1002 Sheridan Avenue  
Cody WY 82414

  
\_\_\_\_\_  
Jana R. Fitzgerald  
Executive Assistant  
State Board of Equalization  
P.O. Box 448  
Cheyenne, WY 82003  
Phone: (307) 777-6989  
Fax: (307) 777-6363

cc: SBOE  
Edmund J. Schmidt, Director, Department of Revenue  
Marvin Applequist, Property Tax Division, Department of Revenue  
Commission/Attorney/Treasurer/Clerk - Park County  
CCH  
ABA State and Local Tax Reporter  
State Library  
File