

BEFORE THE STATE BOARD OF EQUALIZATION
FOR THE STATE OF WYOMING

IN THE MATTER OF THE APPEAL OF)
LARAMIE COUNTY ASSESSOR FROM)
A DECISION OF THE LARAMIE COUNTY) Docket No. **2009-112**
BOARD OF EQUALIZATION - 2009)
PROPERTY VALUATION (Blythe Property))

DECISION AND ORDER

APPEARANCES

Mark Voss, Laramie County Attorney, appeared on behalf of Brenda Arnold, Laramie County Assessor (Assessor).

David J. Blythe (Taxpayer) did not file a brief or otherwise appear in this matter.

DIGEST

This is an appeal from a decision of the Laramie County Board of Equalization (County Board) reversing and remanding the Assessor's valuation of Taxpayer's property for 2009 tax purposes. The County Board directed the Assessor to revise the condition of Taxpayer's home from "Average" to "Fair." The Assessor's Notice of Appeal was filed with the State Board of Equalization (State Board) effective August 21, 2009. The Assessor filed a brief as allowed by the October 9, 2009, State Board Briefing Order. Taxpayer did not file a brief. Oral argument was not requested by either party.

The State Board, comprised of Thomas D. Roberts, Chairman, Steven D. Olmstead, Vice-Chairman, and Deborah J. Smith, Board Member, considered the Assessor's Notice of Appeal, the Brief of Petitioner (Assessor), the County Board Record, and the decision of the County Board.

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

We reverse the decision of the County Board.

ISSUES

The Assessor's Brief sets out the following issue:

Whether the CBOE's (County Board's) decision in this matter was in accordance with law and supported by substantial evidence in the record, or whether it was arbitrary, capricious, and constituted an abuse of discretion.

[*Brief of Petitioner*, p. 4].

The Taxpayer did not file a brief or otherwise appear in this appeal.

The Assessor, in order to prevail, must establish the County Board decision was not supported by substantial evidence, and/or the County Board acted unlawfully, arbitrarily, or capriciously in reversing the Assessor's value for 2009 tax purposes and remanding the matter "to the Assessor with instructions to revise the condition of the Taxpayer's home from 'Average' to 'Fair' and issue a revised assessment based on those characteristics." [County Board Record, p. 89].

PROCEEDINGS BEFORE THE COUNTY BOARD

The County Board conducted a hearing on June 15, 2009, at which Taxpayer and the Assessor each testified and presented exhibits. The County Board entered its Decision and Order on July 30, 2009, reversing the Assessor's 2009 fair market value for Taxpayer's property and remanding the matter to the Assessor with instructions to revise the condition of Taxpayer's home from "Average" to "Fair." The decision was mailed to the Assessor and the Taxpayer on July 31, 2009. [County Board Record, pp. 81-90].

JURISDICTION

The State Board is required to "hear appeals from county boards of equalization." *Wyo. Stat. Ann. § 39-11-102.1(c)*. Assessor filed a timely appeal of the County Board decision with the State Board effective August 21, 2009. *Rules, Wyoming State Board of Equalization, Chapter 3 § 2*.

STANDARD OF REVIEW

When the State Board hears appeals from a County Board, 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 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's standards for review of a County Board's 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. *Wyo. Stat. Ann. § 16-3-114(c)(ii)*. However, unlike a district court, the State Board will not rule on claims that a County Board has acted "[c]ontrary to constitutional right, power, privilege or immunity." *Wyo. Stat. Ann. § 16-1-114(c)(ii)(B)*. The State Board's review is limited to a determination of whether the County Board action is:

- (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 residential property at 420 East 7th Street, Cheyenne, Laramie County, Wyoming. The property consists of the east 44 feet of Lot 8, Block 598. The property includes a masonry veneer single story 945 square foot house with a partially finished basement constructed in 1926. There are two detached garages. One is 216 square feet, and the other is 240 square feet. [County Board Record, pp. 1, 18, 24, 64, 67-68, 77].
2. Notice of Assessment for the 2009 tax year was sent to Taxpayer on March 20, 2009, indicating a fair market value \$116,821 for Taxpayer’s residential land and residential improvements. [County Board Record, pp. 16, 64, 67-68].
3. Taxpayer filed a Laramie County Official Appeal of Assessment with the County Assessor on April 8, 2009. A hearing was conducted before the Laramie County Board of Equalization on June 15, 2009. [County Board Record, pp. 1, 3].
4. Mr. Blythe presented a written statement and testified on the condition of his house. He stated it had “extensive structural damage inside. Walls are plaster and need to be removed and replaced. Existing walls are crumbling in stairway and basement. Walls in kitchen and bath need to be replaced and floor in bathroom needs to be replaced due to leaking toilet. Ceiling in basement under bathroom need repair.” He stated a garage floor was cracked and needed replacement. He believed the condition inside of the house was “below average.” [County Board Record, pp. 13-14, 56].
5. Taxpayer testified the house looks “very good” on the outside, although it had been “struck by a car some time ago.” He stated the “pillars holding the roof are shifted little bit.” He said he thought the outside of the house was “above average.” [County Board Record, pp. 13-14, 56].
6. Taxpayer believed the Assessor’s field appraisers made an on-site viewing of his property in 2008. He said “they went through the whole house.” Mr. Blythe believed a field

appraiser saw all the damage to the interior of the house, except the floor damage in the bathroom, as it was recently discovered. He conceded the field appraiser did not see the damage to the pillars supporting the roof, due to his own recent discovery. [County Board Record, pp. 10-11, 47-48].

7. Mr. Blythe presented evidence of a 4.8% decline in values of Cheyenne homes, based upon a "Zillow.com"(Zillow) printout from the Internet. [County Board Record, pp. 1, 6, 11, 41, 51, 57].

8. Taxpayer presented evidence of five pages from an April 2009 real estate advertisement, showing the asking price for homes which he thought were more comparable to his home. [County Board Record, pp.6, 58-62].

9. Mr. Blythe asserted the Assessor used inappropriate comparable homes in her analysis for a fair market value of his house. He said he drove by the homes on the list provided by the Assessor, and did not believe they were appropriate to compare to his house. [County Board Record, pp. 1, 6, 11-12, 51, 56].

10. Taxpayer believed a house, with two more bedrooms and another bath, which he believed was similar to his was on the market for \$99,900, and had recently been reduced from \$104,000. Based on the real estate guide advertising information, Taxpayer did not believe he could get more than \$99,900 for his house. He said he purchased his property two years ago for \$90,000 and did not believe, in light of the housing and economic conditions, it warranted an increase in value to the present \$116,000 fair market value. [County Board Record, pp. 6, 8-11, 51-52, 56].

11. Mr. Blythe stated he had previous experience in the Air Force as a resource manager looking for housing. His experience was to compare homes with numbers of bedrooms and baths and use that information for a value of the house. He stated, in his opinion, that was the correct way to assess property, and the Assessor was using incorrect comparisons when arriving at a assessed value. [County Board Record, pp. 1, 6, 8-11, 38, 51-52, 56].

12. Mr. Blythe stated he did not have any kind of appraisal done for his property, and only relied upon the appraisal made by the Assessor for the previous tax year. [County Board Record, p. 10].

13. The Assessor testified she has been a certified Wyoming tax appraiser since 1989, and has served as the elected Laramie County Assessor since 1995. She stated she was accredited by the International Association of Assessing Officers. [County Board Record, p. 15].

14. The Assessor stated a routine on-site inspection of Taxpayers' property was made by the Assessor's field appraisers on April 26, 2007. The inspection of Taxpayer's house was made inside, as well as outside. [County Board Record, p. 17].

15. The Assessor presented an "Appraisal Report" of Taxpayer's property, which included a photograph and written general description, and market summary, as well as a floor sketch and map indicating the property location. Assessor's "Exhibit 1" included, among other things, the 2009 assessment schedule, a screen printout of the "RealWare" Wyoming Computer Assisted Mass Appraisal (CAMA) system data, and reports with photographs of comparable properties the Assessor used in her analysis. [County Board Record, pp. 16, 24, 63-80].

16. The Assessor verified the data used in the CAMA system, as indicated in the RealWare screen printout in Exhibit 1. The RealWare screen printout showed Taxpayer's property as a single-family residential built in 1926. The house was a single story ranch, with a 945 square foot living space, rated "Fair Plus" quality, and "Average" condition. The house had a 825 square foot basement, with 300 square feet of the basement with a "Fair Finish." [County Board Record, pp. 18, 69].

17. The Assessor stated the quality of the property was determined to be "fair plus," and the condition of the property was "average" for its age, which was 82 years. She stated she determined the quality and condition based upon the Marshall & Swift definitions. [County Board Record, pp. 18, 24-25, 46-47, 69].

18. The Assessor verified she utilized the State's CAMA system, as well as the state mandated use of the Marshall & Swift cost system, when determining Taxpayer's property fair market value. The Assessor stated the information in the Marshall and Swift system was updated on an annual basis, so there was a new property fair market value determined every year. An assessment schedule was sent to Taxpayer on March 20, 2009, indicating a fair market value for his property of \$116,821. [County Board Record, pp. 18-19, 64, 69].

19. The Assessor depreciated the value of Taxpayer's house, based upon age and life expectancy. The residential depreciation was 33%. This was how the Assessor took into account the age of the structure. The Assessor believed there was 20 to 25 years of remaining life for Taxpayer's residence. [County Board Record, pp. 18, 24-25, 27-28, 40, 69].

20. The Assessor started with replacement cost new less depreciation (RCNLD) based on the Marshall & Swift approach to value. The Assessor compared the RCNLD to sales prices of valid market sales in 2008 of 28 properties within the same neighborhood as Taxpayer. The 28 sales were compared to the CAMA system RCNLD and a percentage difference was

obtained, which indicated the properties in the same neighborhood were selling at an average of 38% more than RCNLD. To reach fair market value the Assessor, therefor, applied a 38% increase adjustment to every residential structure within the area, including the Taxpayer's house. [County Board Record, pp. 18-19, 41-42, 64-65, 69-76].

21. Using the information obtained on Taxpayer's house, the Assessor was able to determine, by the CAMA system, the cost of building the same structure new using current labor and materials cost, which was \$99,620. [County Board Record, pp. 19-20, 70].

22. Due to the structure's age and condition, the Assessor applied a depreciation of 33%, or reduced the house value by \$32,875, which gave the RCNLD value. The Assessor asserted the depreciation was an allowance to cover the types of repair issues raised by the Taxpayer. The RCNLD value, plus the land value, provided the base value. [County Board Record, pp. 20, 24, 70].

23. The Assessor, using the base value, made the necessary market adjustment of 38%, which increased the value of Taxpayer's house by \$25,363. The result was an improvement value of \$92,108. The two additional garages were added in, at their RCNLD values, without a market adjustment. The result was a fair market value of the land, the house and two garages, as indicated in Taxpayer's assessment notice, of \$116,821. [County Board Record, pp. 18-19, 64-65, 69-76].

24. The Assessor testified she complied with Department regulations and state statutes in calculating the fair market value of Taxpayer's property. [County Board Record, pp. 15-16, 27].

25. The Assessor stated she believed the assessment process was fair and accurate in determining the fair market value of Taxpayer's property. [County Board Record, p. 23].

26. The Assessor provided an analysis of comparable properties, including ones Mr. Blythe wanted the Assessor to consider. The comparable analysis reinforced the Assessor's conclusion that Taxpayer's property should be valued, as of January 1, 2009, at \$116,821. [County Board Record, pp. 22-23, 64, 77-80].

27. Assessor provided data she obtained from the Internet discrediting the accuracy of the "Zillow.com" (Zillow) estimate. The Assessor found the Zillow database for Laramie County, Wyoming to be accurate within 5 percent of the sales price reported in Zillow 15% of the time; accurate within 10 percent of the reported Zillow sales price 29% of the time; and, accurate within 20 percent of the reported Zillow sales price 51% of the time. She believed the low percentage of accuracy was the result of Wyoming not being a sales price disclosure

state. She stated sales information was not public information. [County Board Record, pp. 21-22, 41].

28. The Assessor related the definition of “average condition” from Marshall & Swift as:

Some evidence of deferred maintenance and normal obsolescence with age and then few minor repairs are needed, along with some refinishing, but all major components still functioning.

[County Board Record, p. 24].

29. The Assessor related the definition of “fair condition” from Marshall & Swift as:

[Much] repair is needed. Many items need refinishing or overhauling. Deferred maintenance is obvious, inadequate building, utility, and services, all shortening the life expectancy.

[County Board Record, p. 24].

30. The Assessor admitted not every home was viewed on the inside by her or her office staff, although Taxpayer’s house had an internal inspection. She also admitted she personally has not viewed every property in Laramie County, but relies upon her assessing staff to obtain the details of the properties. [County Board Record, pp. 32-33].

31. The Assessor stated she collects a variety of data and detailed characteristics regarding properties to be assessed, but does not make a bedroom count in the appraisal process. [County Board Record, pp. 34, 37].

32. The County Board issued its decision on July 30, 2009, reversing the Assessor’s 2009 fair market value for Taxpayer’s property. The County Board directed the Assessor to revise the condition of the Taxpayer’s home from “Average” to “Fair” and issue a revised assessment based on those characteristics. [County Board Record, p. 89].

33. Assessor appealed the CBOE’s decision to the State Board effective August 21, 2009. [*Notice of Appeal*].

PRINCIPLES AND APPLICABLE LAW

34. The State Board is authorized to “hear appeals from county boards of equalization.” *Wyo. Stat. Ann. § 39-11-102.1(c)*.

General Principles

35. 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.”

36. 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.”

37. 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).

38. 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)*.

39. 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).

40. 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)*; *Wyo. Stat. Ann. § 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)*.

41. The Department of Revenue (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)*.

42. The Department¹ 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).

43. 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).

44. 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

¹The Department adopted new rules effective December 7, 2009, revising Chapter 9. *Rules, Department of Revenue*. The references in this decision are to the rules in effect as of January 1, 2009, the assessment date.

by identifying current issues of concern and presented to the Department of Revenue Director no later than January 31st.

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

45. 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.

Section 7. Reconciliation. The appraiser shall weigh the relative significance, applicability and appropriateness of the indications of value derived from the approaches to value or methods outlined above, and will place the most weight and reliance on the value indicator which, in his professional judgment, best approximates the value of the subject property. The appraiser shall evaluate all alternative conclusions and reconcile the value indicators to arrive at a final estimate of value. For market value, the final estimate is that value which most nearly represents what the typical, informed, rational purchaser would pay for the subject property and a rational seller would accept if it were available for sale on the open market as of the date of the appraisal, given all the data utilized by appraisers in their analyses.

Rules, Wyoming Department of Revenue, Chapter 9 § 7.

46. In valuing real property and improvements for tax purposes, the 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.).

47. An assessor is also required to take into consideration appreciation. *Rules, Wyoming Department of Revenue, Chapter 9 § 6(b.)(iii.).* 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

48. 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).

49. 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).

50. 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.

51. 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*, at 1351.

52. Our evaluation of this appeal turns, at least in part, 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

53. Taxpayer presented evidence of several homes for sale from an April 2009 real estate guide advertisement which he believed reflected the fair market value for his home. Mr. Blythe believed these homes represented the declining values of housing that he presented from the "Zillow.com" information. Unfortunately, the information Mr. Blythe provided was dated for April 2009, not as of the statutorily required assessment date January 1, 2009. Furthermore, the information did not include the actual sales price of the real estate properties. *Supra*, ¶¶ 7, 8, 38, 39.

54. The Assessor complied with the requirements of state law in determining the value for Taxpayer's property by using the cost approach adjusted to account for depreciation and appreciation, as prescribed in Chapter 9 of the Rules promulgated by the Department. *Rules, Wyoming Department of Revenue, Chapter 9 § 6(b.)*. The Assessor utilized the CAMA system provided by the Department to determine the value of Taxpayer's structures. The use of the CAMA system is specially authorized and entitles the Assessor's value to be afforded a presumption of correctness. *Supra*, ¶¶ 46, 47, 49, 51.

55. Taxpayer did not present an independent appraisal, or any evidence challenging the CAMA system, its use by the Assessor, or the information specific to his property entered into the CAMA system. *Supra*, ¶ 12.

56. The Assessor collected 2008 sales information and compared the valid sales prices for the properties in the same neighborhood as Taxpayer's with the value calculated using replacement cost new less depreciation (RCNLD) for those same properties. She found the value reflected by the sales prices exceed the RCNLD by 38%. She, therefore, adjusted the values of all properties in the neighborhood by 38% to reflect the indicated appreciation. *Supra*, ¶¶ 20, 23.

57. The only evidence presented by Taxpayer concerning the condition of his house was his written protest and testimony in which he asserted there were needed repairs to his residence. He did not present any independent evidence, such as a property appraisal, photographs of damages, or contractor repair estimates, which addressed the condition of the residence within the applicable definitions of average and fair condition as presented by the Assessor. There was no other evidence of needed repairs or deferred maintenance which affected the utility of the house, and therefore shorten its life expectancy as required to support a "fair" condition. The testimony by Mr. Blythe, although clearly honest and sincere, was without independent corroboration, but simply his opinion. His opinion was not sufficient by itself to provide the required substantial evidence needed to overcome the presumption of validity in favor of the Assessor's determination of "average" condition for Taxpayer's house considering its age. Taxpayer also did not rebut the Assessor's assertion the depreciation allowance of thirty-three percent (33%) was intended as a reflection of needed repairs. *Supra*, ¶¶ 4, 5, 16,17, 22, 28, 29.

58. Taxpayer did not provide any evidence regarding the condition of the garages, other than to assert the floor was cracked. *Supra*, ¶¶ 4, 12.

59. We can appreciate Mr. Blythe's concern about increases in the valuation of his property. We are, however, constrained to conclude there was not sufficient substantial evidence in the record to support the County Board's decision directing the Assessor to change the condition of Taxpayer's property, which in effect reduced the valuation of Taxpayer's structures, and thus its fair market value. Taxpayer did not challenge the CAMA system or assert the Assessor improperly utilized the system. 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. *Supra* ¶¶ 35, 36, 37.

60. The valuation of the Assessor derived using the CAMA system is presumed valid, accurate, and correct. In this case, Mr. Blythe failed to present sufficient substantial evidence to overcome the presumption of validity in favor of the Assessor's condition determination for the house and two garages. The CAMA system was a rational method, equally applied to all property, and thus achieved essential fairness. The decision of the County Board was not supported by substantial evidence, and therefore must be reversed. Based on this conclusion, we do not need to consider whether the County Board decision was unlawful, arbitrary, or capricious. *Supra* ¶¶ 49, 50, 51, 52.

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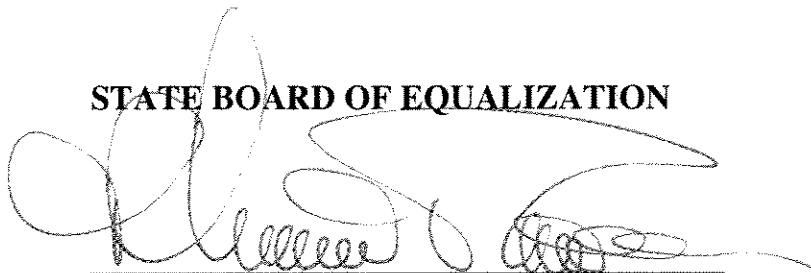
ORDER

IT IS THEREFORE HEREBY ORDERED the Decision and Order of the Laramie County Board of Equalization directing the Assessor to change the condition description of Taxpayer's property from average to fair, is **reversed**.

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 30th day of March, 2010.

STATE BOARD OF EQUALIZATION



Thomas D. Roberts, Chairman

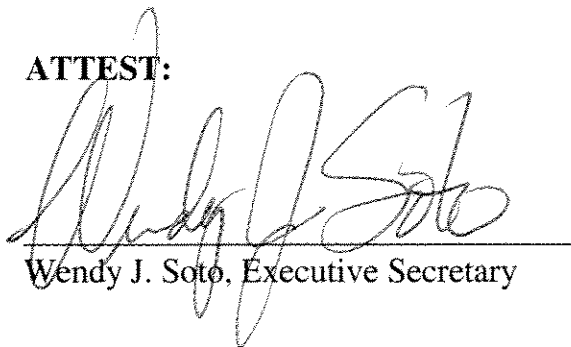


Steven D. Olmstead, Vice-Chairman



Deborah J. Smith, Board Member

ATTEST:



Wendy J. Soto, Executive Secretary


CERTIFICATE OF SERVICE

I hereby certify that on the 30th day of March, 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:

David J. Blythe
420 East 7th Street
Cheyenne WY 82007

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Laramie County Assessor
PO Box 307
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Cheyenne WY 82003-0608



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