

BEFORE THE STATE BOARD OF EQUALIZATION

FOR THE STATE OF WYOMING

IN THE MATTER OF THE APPEAL OF THE)
LARAMIE COUNTY ASSESSOR FROM)
A DECISION OF THE LARAMIE COUNTY) Docket No. 2009-113
BOARD OF EQUALIZATION - 2009)
PROPERTY VALUATION)
(LaPlante Property))

DECISION AND ORDER

APPEARANCES

Sylvia Lee Hackl, Deputy Laramie County Attorney, for Petitioner Brenda Arnold, Laramie County Assessor (Assessor).

Respondent Bruce LaPlante (Taxpayer) appeared *pro se*, and on behalf of his wife.

DIGEST

This appeal is 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 with instructions to revise the condition of Taxpayer's home from "Average" to "Fair Plus" and issue a revised assessment. The Assessor's Notice of Appeal was filed with the State Board of Equalization (State Board) effective August 21, 2009. The Assessor and Taxpayer filed briefs as allowed by the October 9, 2009, State Board Briefing Order. 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 the Assessor's Notice of Appeal, the Brief of Petitioner (Assessor), the Brief of Respondent (Bruce LaPlante), 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 sets out the following issue:

Whether the [County Board] 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. 3.]

The Taxpayer did not specifically identify any issues. Taxpayer argues the decision of the County Board was supported by substantial evidence and not arbitrary or capricious.

[*Brief of Respondent*].

The Assessor, in order to prevail, must establish the County Board decision is not supported by substantial evidence, and/or the County Board acted unlawfully, arbitrarily, and capriciously in reversing and remanding with instructions the Assessor's value of Taxpayer's property for 2009 tax purposes.

PROCEEDINGS BEFORE THE COUNTY BOARD

The County Board conducted a hearing on June 18, 2009, at which Bruce LaPlante and the Assessor each testified and presented exhibits. Mr. LaPlante's wife was present at the County Board hearing. The County Board entered its Decision and Order on July 30, 2009, reversing and remanding the Assessor's 2009 fair market value for Taxpayer's property with instructions to revise the condition of Taxpayer's home from "Average" to "Fair Plus" and issue a revised assessment. The decision was mailed to the Assessor and Taxpayer on July 31, 2009. [County Board Record, pp. 3, 87-97].

JURISDICTION

The State Board is required to “hear appeals from county boards of equalization.” *Wyo. Stat. Ann. § 39-11-102.1(c)*. The 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. § 16-3-114(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, and his wife, own residential property at 317 Lake Place, Cheyenne, Laramie County, Wyoming. The property is more particularly described as Lake Tracts: Tract 2, Block 2. The property has a frame siding single story ranch style home, with 1538 square feet of finished living area. The home was constructed in 1955, and has no basement. The property has a 720 square foot detached garage built in 1955; a 600 square foot utility structure built in 1997, and a 56 square foot wood storage shed built in 1965. The land area is 20,250 square feet, or approximately .46 acre. [County Board Record, pp. 1, 11-13, 24-27, 43, 52, 64-65, 67-68, 71-72, 83].
2. The initial Notice of Assessment was mailed to Taxpayer on March 20, 2009, indicating a fair market value for the property of \$154,889. [County Board Record, pp. 20, 67].
3. Taxpayer filed a Laramie County Official Appeal of Assessment with the County Assessor on April 20, 2009. [County Board Record, pp. 1, 28].
4. The Assessor and Taxpayer met on April 20, 2009, and reviewed Taxpayer’s property characteristics. Taxpayer was provided with sales information at that time. An error was discovered by the Assessor upon her property review, wherein the garage had been entered into the computer twice. The error was corrected and an Amended Assessment Schedule,

dated April 22, 2009, was mailed to Taxpayer, indicating a revised fair market value of \$141,129. [County Board Record, pp. 28, 68].

5. A hearing was conducted before the County Board on June 15, 2009. [County Board Record, pp. 2, 3].

6. Mr. LaPlante presented, as evidence, a written statement and testified regarding the neighborhood and location of his house. [County Board Record, pp. 6-9, 52-59].

7. Taxpayer believed the Assessor did not utilize a proper neighborhood when assessing his property. Taxpayer asserted the neighborhood the Assessor was using encompassed too large an area. [County Board Record, pp. 6-7].

8. Mr. LaPlante provided a definition of “neighborhood” as “the inhabitants who live in the vicinity of each other, a place that’s near, the adjoining district or anyplace that’s not distant.” [County Board Record, p. 7].

9. Taxpayer took issue with the definition of neighborhood in the Assessor’s handout entitled “A Language of Assessment.” He did not agree the Assessor should determine the neighborhood for assessment. He disagreed on the Assessor’s use of a geographic neighborhood as mentioned in the Assessor’s handout entitled “Residential Properties - The Basics.” [County Board Record, pp. 6-7, 9, 60-63].

10. Mr. LaPlante presented a spreadsheet he developed listing information on numerous residential properties he obtained through the Assessor, which were sold in the Assessor’s defined neighborhood in 2008, and used as comparable properties for assessment purposes. [County Board Record, pp. 7-8, 10-11, 52, 65].

11. Mr. LaPlante objected to the use of twenty-six properties (numbered 8 thru 33) listed on his spreadsheet, as these properties were not near his home or in the neighborhood he defined. Five other properties (numbered 3 thru 7) were eliminated as unusable for comparison by Taxpayer for various reasons, such as being too new or just not comparable. [County Board Record, pp. 52, 65].

12. Taxpayer provided information concerning the remaining two properties on his spreadsheet (numbered 1 and 2). He provided photos of his property at 317 Lake Place, and photos of the two comparable homes at 711 East Allison and 608 David. The two comparable homes were near his property and would fit into his definition of neighborhood.

He asserted they were of like age and similar in size. [County Board Record, pp. 8, 10-11, 53-59].

13. Taxpayer compared the distinguishing characteristics of his property to the remaining two comparable properties listed on his spreadsheet. He compared general building characteristics and size, lot size and outbuildings. [County Board Record, pp. 10-11, 47-48].

14. Mr. LaPlante presented evidence of a decline in values of Cheyenne area homes, based upon a "Zillow.com" (Zillow) printout from the Internet. [County Board Record, pp. 12, 51].

15. Taxpayer utilized the Zillow chart to show the selling price of his property and the two comparable properties. He adjusted each property's value to what he determined to be a year end value. He estimated the value of his property to be no more than \$120,000. [County Board Record, pp. 12-15, 51].

16. Mr. LaPlante believed the Assessor used inappropriate comparable properties in her analysis for a fair market value of his house. He questioned why the homes were not compared with numbers of bedrooms and baths and why that information was not used in valuing his property. [County Board Record, pp. 14-15].

17. Mr. LaPlante did not have a real estate market analysis done for his property. [County Board Record, p. 18].

18. Mr. LaPlante acknowledged and conceded he received an amended assessment, in the amount of \$141,129. This reduced the value of his property from the initial 2009 assessment schedule, which in turn reduced his estimated taxes to an amount less than the previous year, 2008. [County Board Record, pp. 12, 15-16].

19. Brenda Arnold has been a certified Wyoming tax appraiser since 1989, and has served as the elected Laramie County Assessor since 1995. She is accredited by the International Association of Assessing Officers. Ms. Arnold has over 1,400 hours of training as an assessor. [County Board Record, p. 19].

20. Ms. Arnold stated she was familiar with Wyoming law governing the assessment of property. She stated she complied with the Department and State Board rules, as well as the state constitution and statutes in calculating the fair market value of Taxpayer's property. [County Board Record, pp. 19-20, 30].

21. An on-site inspection of Taxpayers's property was made by the Assessor's field appraisers on January 17, 2006. The inspection of Taxpayer's property included a measurement of all structures, as well as, an examination of the quality and condition of the structures, although it was unknown whether the interior of the house was viewed. The information was keyed into the Wyoming Computer Assisted Mass Appraisal system (CAMA). Another on-site review of Taxpayer's home was made by Ms. Arnold and her staff on May 5, 2009. The condition of Taxpayer's home was determined by the Assessor to be "Average." [County Board Record, pp. 22, 28, 39].

22. The Assessor presented, as evidence, an "Appraisal Report" of Taxpayer's property showing a photograph and a written general description and market summary of Taxpayer's property, as well as floor sketch and map indicating its location. The Assessor's "Exhibit 1" included, among other things, a letter to Taxpayer, a map showing Taxpayer's property and "all valid, open market sales within neighborhood 5000." The exhibit included a copy of the 2009 assessment notice dated March 20, 2009, as well as, a copy of the amended assessment notice dated April 22, 2009. [County Board Record, pp. 20-21, 66-86].

23. The Assessor's Exhibit 1 included a screen printout of "RealWare" system data which was generated from the CAMA system. Exhibit 1 also included reports with photographs of comparable properties the Assessor used in her analysis. [County Board Record, pp. 20-23, 66-86].

24. The RealWare printout presented detailed characteristics of Taxpayer's property, including outbuildings. The information for Taxpayer's property was keyed into CAMA to generate the report printout. [County Board Record, pp. 20-23, 73].

25. Ms. Arnold amended Taxpayer's 2009 assessment following his filing a notice of appeal. The amended assessment was the result of discovering the detached garage was listed twice in the CAMA system. An amended assessment schedule was issued on April 22, 2009, which indicated a revised fair market value for Taxpayer's property in the amount of \$141,129. [County Board Record, pp. 28, 39, 68].

26. Ms. Arnold verified the data used in the CAMA system, as indicated in the RealWare screen printout in Exhibit 1. The house was rated "Average" quality, and "Average" condition age, although there had been some remodeling. [County Board Record, pp. 23-24, 71, 73-74].

27. The Assessor verified she utilized the state's CAMA system, including the state mandated use of the Marshall & Swift cost system, when determining the fair market value of Taxpayer's property. [County Board Record, pp. 23, 73-74].
28. Using the information obtained on Taxpayer's house, the Assessor was able to determine, from the CAMA system, the replacement cost of building the same structure new today using today's labor and materials cost, was \$127,684. [County Board Record, pp. 24, 73-74].
29. The CAMA system depreciated or reduced the replacement cost new by 27% to account for the age of the structure and to maintain uniformity for similar structures of similar age. The effective age of Taxpayer's residence was 25 years, with 20 years of remaining life for the structure. The CAMA system, due to the structure's age and condition, applied a depreciation of 27%, or reduced the replacement cost new value by \$34,227, which gave the replacement cost new less depreciation (RCNLD) value. The Assessor stated \$34,227 was subtracted from the Taxpayer's house at replacement cost new value of \$127,684, which resulted in a base value of \$93,457. [County Board Record, pp. 24, 26, 73-74].
30. The Assessor's designated neighborhood, 5000, which included Taxpayer's property, included all single-family residential structures in South Cheyenne Water and Sewer District. The Assessor asserted she "needed a large area in order to get a statistically valid sample." [County Board Record, pp. 21, 25, 69, 71].
31. The Assessor began the valuation process with the replacement cost new less depreciation approach to value. She compared the 2008 sales prices of 33 valid market sales of property within the same neighborhood as Taxpayer's to the CAMA system RCNLD. A percentage was then obtained, which indicated the properties in the same neighborhood were selling 18% more than RCNLD. To reach fair market value, the Assessor, therefore, applied the additional 18% adjustment to all residential structures within the area, including Taxpayer's house. [County Board Record, pp. 25-26, 71, 81-82].
32. Ms. Arnold, using the base value, made the necessary market adjustment of 18%, which increased Taxpayer's residential structure value by \$16,822. The result was an improvement value of the residence in the amount of \$110,279. [County Board Record, pp. 26, 73, 74].
33. Taxpayer's additional three outbuildings were valued at their RCNLD values, with no market adjustments. The result was a fair market value of the land, the house and the

outbuildings, as indicated in Taxpayer's amended assessment notice, of \$141,129. [County Board Record, pp. 27-28, 68, 75-80].

34. Ms. Arnold provided an analysis of comparable properties. She asserted she arrived at a median sales ratio of "95" for the 33 sales in Taxpayer's neighborhood. She also asserted she had a "coefficient of dispersion (COD) of 11.5" for fair market values in the Taxpayer's neighborhood. The comparable analysis reinforced the Assessor's conclusion Taxpayer's property should be valued, as of January 1, 2009, at \$141,129. [County Board Record, pp. 28-30, 81-83].

35. Ms. Arnold utilized the data of three comparable properties, showing similar characteristics to Taxpayer's property. She compared the appraised fair market values of the three properties to the fair market value she determined for Taxpayer's property. The purpose of the comparison was to show how she considered homes similar to Taxpayer's home in her neighborhood analysis. [County Board Record, pp. 29-30, 83-86].

36. The Assessor asserted she complied with state law, and the Department and the State Board requirements in determining the fair market value of Taxpayer's property. [County Board Record, p. 30].

37. The Assessor collects a variety of data and detailed characteristics regarding properties to be assessed, but does not use actual bedroom count in the appraisal process of fair market value of residential structures. Bath fixtures, however, are noted when that information is made available by the property owner. [County Board Record, pp. 31-32].

38. Ms. Arnold provided data she obtained from the Internet discrediting the accuracy of the "Zillow.com" (Zillow) estimate. She asserted the Zillow database for Laramie County, Wyoming, was accurate within 20 percent of the reported Zillow sales price 51 percent 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. 34-35, 51].

39. The County Board solicited Taxpayer's opinion of the condition of his residential structure, based upon definitions from Marshall & Swift regarding "Average" and "Fair" and, "Poor" condition. [County Board Record, pp. 41-42].

40. The definition of "Average condition" from Marshall & Swift provided by the County Board was:

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 and contributing toward an extended life.

[County Board Record, p. 42].

41. The definition of “Fair condition” from Marshall & Swift provided by the County Board was:

Much repair needed, many items need refinishing or overhauling, deferred maintenance obvious, inadequate building, utility, and services, all shorten life.

[County Board Record, p. 42].

42. The definition of “Poor condition” from Marshall & Swift provided by the County Board was:

Condition would be worn out.

[County Board Record, p. 42].

43. Mr. LaPlante opined the condition of his residence was “in some aspects I could say average and some aspects I could say fair. It’s really kind of borderline in between those [definitions]. Yeah, fair plus, average minus. It adds . . . it’s a hard call.” [County Board Record, p. 42].

44. The County Board issued its decision on July 30, 2009. The County Board supported the Assessor with the neighborhood she utilized in her analysis. The County Board further found the Assessor had complied with the requirements of state law in determining the value of taxpayer’s property. The County Board, however, reversed the Assessor’s 2009 fair market value for Taxpayer’s property, and remanded the matter to the Assessor with instructions to revise the condition of the Taxpayer’s home from “Average” to “Fair Plus” and issue a revised assessment. [County Board Record, pp. 87-97].

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

PRINCIPLES AND APPLICABLE LAW

46. 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.”

47. 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.”

48. 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).

49. 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)*.

50. 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).

51. 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)*.

52. 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)*.

53. 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).

54. 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).

55. Neighborhood is defined as:

- (1) The environment of a subject property that has a direct and immediate effect on value.
- (2) A geographic area (in which there are typically fewer than several thousand properties) defined for some useful purpose, such as to ensure for later

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.

multiple regression modeling that the properties are homogeneous and share important locational characteristics.²

International Association of Assessing Officers, *Glossary for Property Appraisal and Assessment*, p. 92, (1997).

56. 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 31st.

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

57. 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.

58. 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:

² The Department adopted a definition of "Neighborhood," effective December 7, 2009, which is identical to the IAAO definition. *See, Rules, Wyoming Department of Revenue, Chapter 9 § 4 (a)(xxv).*

(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).

59. 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)*.

60. 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 reiterated the “rational method” standard. *Britt v. Fremont County Assessor*, 2006 WY 10, ¶ 18, 126 P.3d 117, 123 (Wyo. 2006).

61. 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).

62. 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.

63. 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.

64. 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 AND CONCLUSIONS OF LAW

65. Taxpayer presented evidence of two homes sold in his neighborhood, as he defined neighborhood, which he believed reflected the fair market value for his home. Taxpayer believed those two homes represented the declining values of housing he presented from the "Zillow.com" information. Although the information Taxpayer provided was detailed, it was not as detailed as the Assessor's description of the same two comparable properties, nor did it rebut the RCNLD analysis by the Assessor. Furthermore, the Taxpayer did not compare any other homes sold in the neighborhood used by the Assessor, thus limiting the data available for an appropriate analysis. *Supra*, ¶¶ 6, 7, 8, 12, 13, 14, 15, 16, 34, 49, 50.

66. Taxpayer believed the Assessor's defined neighborhood for comparison properties was too large in size. He did not, however, offer any reasonable alternatives in order to obtain the proper statistical analysis required by the Department and State Board. The County Board disagreed with Taxpayer and found in favor of the Assessor on neighborhood size issue. *Supra*, ¶¶ 8, 9, 22, 30, 44, 55.

67. The Assessor complied with the requirements of the state statutes and regulations 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 Department Rules. *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*, ¶¶ 23, 24, 26, 27, 28, 31, 37, 44, 53, 58, 59.

68. Taxpayer did not present an independent appraisal or a market analysis, or any evidence challenging the CAMA system, its use by the Assessor, or any information specific to his property entered into the CAMA system, other than the corrected data error found by the Assessor. Taxpayer admitted he received an amended assessment notice with a reduced valuation for his property upon discovery of the CAMA data entry error by the Assessor. *Supra*, ¶¶ 4, 17, 18, 54, 64.

69. The Assessor collected 2008 sales information and compared the valid sales prices for the properties in the same neighborhood as Taxpayer with the value calculated using replacement cost new less depreciation (RCNLD) for those recently sold properties. She found the value reflected by the sales prices exceeded the RCNLD by 18%. She, therefore, adjusted the value of all properties in Taxpayer's neighborhood by 18% to reflect the indicated appreciation. *Supra*, ¶¶ 31, 32, 59.

70. Although the Assessor did not know whether the interior of Taxpayer's house had an on-site inspection in 2006, she made an on-site inspection on May 5, 2009, and determined the condition of the house to be "Average." *Supra*, ¶¶ 21, 25, 60, 61.

71. The only evidence presented by Taxpayer concerning the condition of his house was his opinion of condition, based upon the Marshall & Swift condition definitions. His testimony only occurred because of a question from the County Board. He did not present any independent evidence, such as a property appraisal, photographs, descriptions of damages, or contractor's repair estimates, which addressed the condition of the residence within the applicable Marshall & Swift definitions of average and fair. There was no other evidence of needed repairs or deferred maintenance which affected the utility of the house, and therefore shortened its life expectancy as required to support a "Fair" condition. Taxpayer's testimony, although clearly honest and sincere, was without independent corroboration. It was simply his opinion. Taxpayer's opinion, by itself, was not sufficient to provide the required substantial evidence to overcome the presumption of validity in favor of the Assessor's determination of "Average" condition for his house considering its age. Taxpayer also did not rebut the Assessor's assertion the depreciation allowance of twenty-seven percent (27%), as a reflection of needed repairs. *Supra*, ¶¶ 31, 39, 40, 41, 41, 43, 61, 62, 64.

72. Taxpayer did not provide any specific evidence regarding the condition of the residence, other than to opine it was “average minus to fair plus” with some reservation. *Supra*, ¶¶ 43, 62, 63.

73. We can appreciate Taxpayer’s concern about 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 decision directing the Assessor to change the condition of Taxpayer’s property, which in effect reduced the valuation of Taxpayer’s structures, and thus the 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* ¶¶ 15, 61, 63.

74. The valuation of the Assessor derived using the CAMA system is presumed valid, accurate, and correct. In this case, Taxpayer failed to present sufficient substantial evidence to overcome the presumption of validity in favor of the Assessor’s appraisal determination for his residence, or the appraisal methodology. The CAMA system was a rational method, equally applied to all property, and thus achieved essential fairness. Furthermore, Taxpayer failed to present any evidence, other than his opinion testimony, on the condition of his house and how it was different from the determination made by the Assessor. The decision of the County Board is 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* ¶¶ 26, 43, 61, 62, 65.

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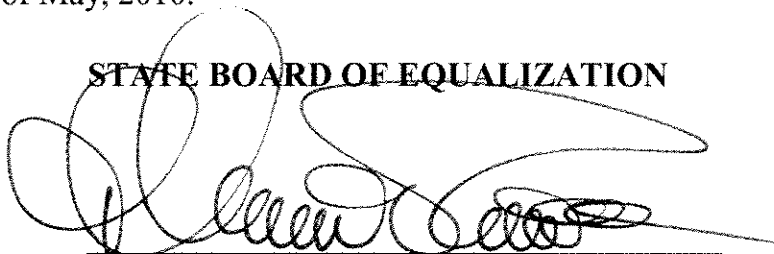
ORDER

IT IS THEREFORE HEREBY ORDERED the Decision and Order of the Laramie County Board of Equalization reversing the Assessor's valuation and directing the Assessor to change the condition description of Taxpayer's property from average to fair plus, 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 19th day of May, 2010.

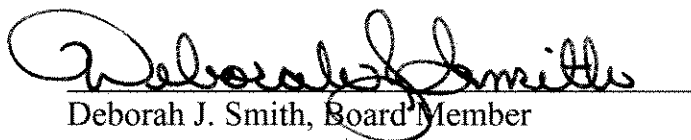
STATE BOARD OF EQUALIZATION



Thomas D. Roberts, Chairman

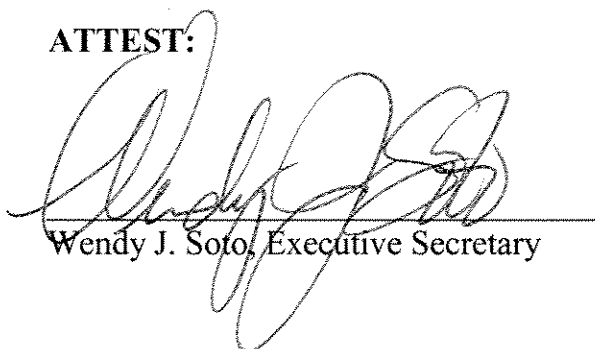


Steven D. Olmstead, Vice-Chairman



Deborah J. Smith, Board Member

ATTEST:



Wendy J. Soto, Executive Secretary

CERTIFICATE OF SERVICE

I hereby certify that on the 19th day of May, 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:

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Cheyenne WY 82007

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CCH
ABA State and Local Tax Reporter
State Library
File