

**BEFORE THE STATE BOARD OF EQUALIZATION**

**FOR THE STATE OF WYOMING**

IN THE MATTER OF THE APPEAL OF )  
**MARK AND APRIL WHITLOCK** FROM A )  
DECISION OF THE WASHAKIE COUNTY ) Docket No. **2009-114**  
BOARD OF EQUALIZATION - 2009 )  
PROPERTY VALUATION )

IN THE MATTER OF THE APPEAL OF )  
**WASHAKIE COUNTY ASSESSOR** FROM )  
A DECISION OF THE WASHAKIE COUNTY ) Docket No. **2009-121**  
BOARD OF EQUALIZATION - 2009 )  
PROPERTY VALUATION (Whitlock Property))

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**DECISION AND ORDER**

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**APPEARANCES**

Mark Whitlock and April Whitlock (Taxpayers) appeared *pro se*.

Kathryn J. Treanor, Washakie County Assessor (Assessor), appeared *pro se*.

**DIGEST**

These consolidated appeals arose from a decision of the Washakie County Board of Equalization (County Board) modifying the Assessor's 2009 valuation of Taxpayers' property. Taxpayers' Notice of Appeal was filed with the State Board of Equalization (State Board) effective August 21, 2009. The Assessor's Notice of Appeal was filed with the State Board effective August 31, 2009. The individual appeals were consolidated by an Order of Consolidation entered by the State Board on November 9, 2009.

Taxpayers filed briefs as allowed by the State Board Briefing Order dated November 24, 2009. The Assessor did not file a brief, choosing instead to rely solely on the County Board Record. Taxpayers requested oral argument on December 2, 2009. They withdrew their request on February 8, 2010.

The State Board, comprised of Thomas D. Roberts, Chairman, Steven D. Olmstead, Vice Chairman, and Deborah J. Smith, Board Member, considered Taxpayers' briefs, the County Board Record, and the August 18, 2009, decision of the County Board.

We evaluate the appeals of the County Board decision by both the Assessor and Taxpayers 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.*

The State Board, in order for either Taxpayers or the Assessor to prevail in their respective appeals, must conclude the County Board decision was not supported by substantial evidence, and/or the County Board acted unlawfully, arbitrarily, and capriciously, or abused its discretion in modifying the Assessor's value for 2009 tax purposes.

We reverse the decision of the County Board.

## **ISSUES**

Taxpayers' Letter Brief identified a number of specific objections to the County Board Final Order. Taxpayers, in summary, assert the County Board acted arbitrarily in not using the "actual" local cost figures, as presented by Taxpayers, when the County Board calculated what it believed to be the replacement cost and fair market value for Taxpayers' property for 2009. Taxpayers also assert, because the actual costs were not used, the County Board decision was not supported by substantial evidence. Taxpayers request their property be valued for 2009 using the cost figures reflected by the evidence they presented. [*Opening Brief for Mark and April Whitlock, Docket No. 2009-114*].

## **PROCEEDINGS BEFORE THE COUNTY BOARD**

The County Board conducted a hearing on July 17, 2009. The County Board entered its Final Decision on August 18, 2009, modifying the Assessor's 2009 fair market value for Taxpayers' property. The County Board Record does not reflect when the County Board Final Decision was mailed to either the Assessor or Taxpayers. [County Board Record, pp. 128-131].

## **JURISDICTION**

The State Board is required to “hear appeals from county boards of equalization.” *Wyo. Stat. Ann. § 39-11-102.1(c)*. Taxpayers filed a timely appeal of the County Board decision with the State Board effective August 21, 2009. The Assessor filed a timely appeal of the County Board decision with the State Board effective August 31, 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))*.

The State Board standards for review of a county board decision are, by Rule, 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 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 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. Taxpayers own commercial property at 413 Lawson Ave. in Worland, Washakie County, Wyoming. [County Board Record pp. 16, 74<sup>1</sup>; Audio Recording, 8:27].
2. Taxpayers submitted to the Assessor a letter contesting the 2009 property taxes for their commercial property on April 30, 2009. [County Board Record pp. 1, 15, 75].
3. The County Board conducted a hearing on Taxpayers’ appeal on July 17, 2009. [County Board Record pp. 76-78; Audio Recording, 1:05].
4. The County Board entered a Final Order on August 18, 2009, modifying the Assessor’s 2009 fair market value for Taxpayers’ commercial property. [County Board Record pp. 128-131].

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<sup>1</sup>Each set of exhibits presented at the County Board hearing by Taxpayers and the Assessor are identified by Arabic numerals beginning with “1.” References to exhibits are thus by page number.

5. The Assessor's office 2009 Cost Detail for Taxpayers' property indicated a base replacement value of \$292,180 for a 7000 square foot building at \$41.74 per square foot. The HVAC component, which is only radiant heat, added \$12,950. There was additional value of \$10,568 added for lofts, fencing, and concrete slabs. The total 2009 replacement cost new for Taxpayers' building was thus \$315,698. [County Board Record pp. 17-19, 111; Audio Recording, 8:40-10:11].
6. The 2009 Cost Detail also reflected an adjustment for physical depreciation of 26%, or \$82,081, for a replacement cost new less depreciation for Taxpayers' building of \$233,617. [County Board Record pp. 17-19, 111; Audio Recording, 10:23-10:38].
7. The fair market value of Taxpayers' commercial real property and improvements in 2005 was \$167,778 (real property, \$21,969; improvements, \$145,809); in 2006, \$174,031 (real property, \$21,969; improvements, \$152,062); in 2007, \$189,237 (real property, \$21,969; improvements, \$167,268); in 2008, \$336,718 (real property, \$69,695; improvements, \$267,023); and in 2009, \$272,646 (real property, \$39,029; improvements, \$233,617). [County Board Record pp. 22, 26-34; Audio Recording, 11:56].
8. Taxpayers paid \$145,000 for their commercial property on March 9, 2005. A market analysis by Landis Benson done as of March 1, 2005, indicated a value of \$148,800. [County Board Record pp. 23-25; Audio Recording, 14:07-14:35].
9. Taxpayers presented estimates from various contractors to build a 7000 square foot commercial building exactly the same as their current building. They gave all contractors the same information with regard to their building, and each contractor visited the current building. [County Board Record pp. 36-40; Audio Recording, 19:22-23:00].
10. Taxpayers also presented an estimate which they derived themselves for the cost of installing radiant heaters. [County Board Record pp. 41-43; Audio Recording, 23:38].
11. Taxpayers requested quotes from four insurance companies to insure their building. Each quote included an estimate of a replacement cost for the current building. The replacement costs varied from a low of \$185,000 to a high of \$525,951. [County Board Record pp. 44-55; Audio Recording, 23:50-25:50].
12. Taxpayers presented estimates of market value for their commercial property from two real estate brokers. One broker estimated fair market value as of June 19, 2008, at \$199,000. The second broker estimated fair market value as of March 20, 2009, at \$192,500. [County Board Record pp. 56-64; Audio Recording, 26:00-26:40].

13. Taxpayers presented a summary of the replacement costs which they gathered from contractors as well as insurance companies, and offered a comparison to the CAMA building cost detail. [County Board Record pp. 17-19, 65; Audio Recording, 28:50-38:50].

14. William H. Smith testified at the request of Taxpayers. Mr. Smith purchased approximately 40,000 square feet of vacant land directly west of his business location in 2007. He stated he had approached the owners about a possible purchase. The price they suggested, \$.80 per square foot, was reasonable, so he purchased the property. He estimated in 2008 it would cost another \$.75 per square foot to prepare the vacant land as a suitable building site. He expressed his opinion the property had not been on the open market for sale as he is the one who initiated the purchase transaction. The Assessor stated Mr. Smith indicated to her office when the sale was verified in 2007 that the property had been on the market and offered for sale to other persons. [County Board Record p. 69; Audio Recording, 1:10:06-1:14:30, 1:58:39-1:59:24].

15. Roy Decker testified at the request of Taxpayers. Mr. Decker is the owner of Roy Decker & Sons, Inc. He stated he had been in business for 30-40 years, and approximately 90% of his business was the construction of steel buildings. He related the process he used to prepare a quotation for a customer which was based primarily on what kind of building the customer requests. He stated, in general, a larger building usually costs less per square foot. Mr. Decker stated he built the Taxpayers' current building. He prepared a proposal, at Taxpayers' request, to construct an identical building. The proposal was dated March 25, 2009. He was not paid to prepare the proposal. [County Board Record p. 36; Audio Recording, 1:14:50-1:21:50].

16. Steve Trombley testified at the request of Taxpayers. He stated he was familiar with the Taxpayers' building, and had prepared for them an estimate dated April 14, 2009, for a similar 70'x100'x14' all steel building. He had, as of the date of the County Board hearing, been constructing steel buildings for approximately 25 years. [County Board Record p. 37; Audio Recording, 1:21:50-1:30:08].

17. Jeremy Carver testified at the request of Taxpayers. Mr. Carver owned Carver Plumbing and Mechanical. He provided Taxpayers a proposal for two overhead radiant heaters including installation. Mr. Carver stated the costs were accurate as of the proposal date of April 9, 2009. [County Board Record pp. 39-40; Audio Recording, 1:30:08-1:34:26].

18. Tom Allred testified at the request of Taxpayers. Mr. Allred is a Farm Bureau insurance agent in Worland, Wyoming. The original replacement cost for Taxpayers'

building as developed by Mr. Allred using the Marshall & Swift Cost Guide was \$380,000. The Farm Bureau home office agreed to lower the replacement cost to \$216,300 based on construction costs estimates Mr. Allred received from contractors in Worland. Mr. Allred indicated he does not write a lot of business insurance coverage. [County Board Record pp. 47-49; Audio Recording, 2:41:40-2:52:00].

19. Landis Benson testified at the request of Taxpayers. Mr. Benson is a real estate broker. He had been in the real estate business for 23 years. Mr. Benson developed two market analyses for Taxpayers' property. The first, dated March 1, 2005, indicated an opinion of value as of that date of \$148,800. The second analysis, dated June 19, 2008, indicated an opinion of value as of that date of \$199,000. [County Board Record pp. 24, 56; Audio Recording, 1:34:15-1:44:00].

20. Ms. Treanor testified Washakie County, in order to value all commercial buildings in the county in 2009, used a computer assisted mass appraisal [CAMA] software program called RealWare in conjunction with a Marshall & Swift Cost Guide, both of which were mandated by the Department. She, as the Washakie County Assessor, had no ability to use any other software package or cost guide. [County Board Record, Audio Recording, 1:52:18-1:54:05, 2:22:56].

21. The RealWare CAMA computer program, in conjunction with a Marshall & Swift Cost Guide, utilized the building characteristics for each commercial building in Washakie County, including Taxpayers, to develop a replacement cost new less depreciation [RCNLD]. The RCNLD value for a given building can be adjusted based on prior year sales of similar buildings. Ms. Treanor stated there were only 7 valid commercial sales in Washakie County in 2008, and only 2 in the same neighborhood as Taxpayers' building. She thus did not adjust the RCNLD value of Taxpayers' building based on sales. [County Board Record pp. 115, 116-117, 118-119, 120, 121-122; Audio Recording, 1:54:05-1:56:28, 1:57:20-1:57:22, 1:57:59].

22. Ms. Treanor stated there were approximately 900 commercial properties in Washakie County on the date of the County Board hearing. In order to value each commercial property in Washakie County as proposed by Taxpayers, Ms. Treanor offered her opinion her office staff would need to be four times larger at four times the cost. [County Board Record, Audio Recording, 1:56:28-1:57:10].

23. Ms. Treanor asserted her valuation of commercial property in Washakie County for 2009 was within the parameters set by the State Board. [County Board Record, Audio Recording, 1:56:28-1:57:10].



24. The value assigned by the Assessor for Taxpayers' land for 2009 was \$1.40 per square foot. The land value derived by Mr. Benson in 2008 was \$1.50 per square foot. [County Board Record pp. 56-57; Audio Recording, 1:58:08-1:58:39].

25. The Marshall & Swift Cost Guide is developed by region. Wyoming is in the Western Region. The Cost Guide provides an average building cost by region. Washakie County has been assigned by the Department to the same state region as Casper, thus the cost factor is 97% of the Western Region average. [County Board Record p. 73; Audio Recording, 57:20, 2:01:00-2:09:17].

26. The Assessor requested guidance from the Department with regard to Taxpayers' assertion the costs for metal frame buildings used in the CAMA system were unreasonable. The Assessor was informed by the Department she must use the Marshall & Swift Cost Guide provided. [County Board Record p. 35; Audio Recording, 16:22, 2:08:00].

27. Taxpayers had no evidence their commercial property was valued any differently in 2009 than all the other commercial property in Washakie County. Taxpayers further had no objection to the characteristics of their building as entered into the Washakie County CAMA system. [Audio Recording, 1:06:41-1:08:19].

28. Taxpayers requested their commercial property be valued for 2009 at \$25.75 per square foot for the gross building cost with a land value of \$21,969. The total fair market value after add-ons and HVAC and taking into consideration depreciation, would be \$168,798. [County Board Record pp. 71-72; Audio Recording, 51:06-57:20].

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

29. The State Board is authorized to "hear appeals from county boards of equalization." *Wyo. Stat. Ann. § 39-11-102.1(c)*. Taxpayers filed a timely appeal of the County Board decision with the State Board effective August 21, 2009. The Assessor filed a timely appeal of the County Board decision with the State Board effective August 31, 2009. *Rules, Wyoming State Board of Equalization, Chapter 3 § 2*.

### **Applicable law**

30. 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.”

31. 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.”

32. 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).

33. 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)*.

34. 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)*.

35. Each county assessor annually determines the fair market value of all real property and personal 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)*.

36. 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)*.

37. The Department has promulgated rules which establish appraisal techniques which may be used by an assessor. *Rules, Wyoming Department of Revenue, Chapter 9 § 5*<sup>2</sup>. These techniques include the Sales Comparison Approach, the Cost Approach, and the Income or Capitalized Earnings Approach. *Rules, Wyoming Department of Revenue, Chapter 9 § 5(a)(i)(ii)(iii)*. 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).

38. The Department’s Rules provide for use of a CAMA system. *Rules, Wyoming Department of Revenue, Chapter 9 § 7*. 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).

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

#### Section 5. Appraisal Methods.

(a.) The appraisal techniques which may be used by the County Assessor include the approaches described in this section. Each approach used shall be an appropriate method or 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 market value of the property. Each approach used shall also consider the nature of the property and the regulatory and economic environment within which the property operates. All methods used by the Assessor shall be consistent with the applicable IAAO and USPAP standards including, but not limited to, the following (except where standards conflict with Wyoming Statute or Rule): IAAO Standard on Mass Appraisal (2008), IAAO Standard on Automated Valuation Models (AVMs) (2003), IAAO

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<sup>2</sup> The Department Rules, Chapter 9, were amended effective December 7, 2009. The amendments to Chapter 9, however, did not affect the substance of the prior Rules applicable to this appeal. Citations to and quotations of the Department Rules are thus, for the sake of clarity and ease of reference, to the amended Rules.

Standard on Ratio Studies (part A) (2007), Uniform Standards of Professional Appraisal Practice (USPAP) Standard 6 (2008-2009), IAAO Standard on Property Tax Policy and IAAO Standard on Valuation of Personal Property (2004).

*Rules, Wyoming Department of Revenue, Chapter 9 § 5(a).*

Section 9. Reconciliation.

(a.) 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 § 9.*

40. “The county board of equalization has no power to and shall not set tax policy nor engage in any administrative duties concerning assessments which are delegated to the board, the department or the county assessor.”

*Wyo. Stat. Ann. § 39-13-102(d).*

41. 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).

42. 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 § 7*. “The burden is on the taxpayer to establish any overvaluation.” *Hillard v. Big Horn Coal Co.*, 549 P.2d 293, 294 (Wyo. 1976).

43. 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.

44. 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.

45. 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 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). *See also, Schouboe v. Wyoming Department of Transportation*, 2010WY 119, ¶ 12, \_\_\_\_\_ P.3d \_\_\_\_\_, 2010WL 3260072 (Wyo. 2010).

## **Discussion**

46. The focus of Taxpayers’ appeal challenges the Marshall & Swift Cost Guide employed by the RealWare CAMA system to produce a RCNLD for their building. The challenge asserts the replacement cost calculated by the CAMA system using the Marshall & Swift Cost Guide significantly over estimated what it would have actually cost in 2009 to replace Taxpayers’ building.

47. Taxpayers, in support of their assertion the CAMA replacement costs were overstated, offered what they urged was a more accurate replacement cost based on quotations and proposals by Worland area building contractors and insurance agents. Taxpayers as well offered market analyses done by two Worland real estate brokers. *Supra*, ¶¶ 9, 10, 11, 12.

48. The Wyoming constitution and statutes require all property in Wyoming be valued at its fair market value as if January 1<sup>st</sup> of each year. This is the date, therefore, as of which all

county assessors must determine the value of all local assessed property in their respective counties. The appropriate date in this matter for determining the value of Taxpayers' building is thus January 1, 2009. *Supra*, ¶¶ 30, 31, 33, 34.

49. Although Taxpayers clearly invested significant time and effort in gathering and presenting evidence to the County Board with regard to what they asserted should be the replacement cost for their building, none of that evidence, as detailed hereafter (*Infra*, ¶¶ 50-59), reflected costs as of January 1, 2009. Such evidence was therefore not sufficient to overcome the presumption of validity in favor of the 2009 value determined by the Assessor for Taxpayers' building. *Supra*, ¶¶ 8, 10, 11, 12, 42, 43.

50. The estimate by Roy Decker & Sons, Inc. to construct a building equivalent to Taxpayers' building was as of March 25, 2009. *Supra*, ¶ 15.

51. The estimate by Trombley Construction to construct a building equivalent to Taxpayers' building was as of April 14, 2009. *Supra*, ¶ 16.

52. The electrical work estimate by Process Power and Control was valid through May 3, 2009. [County Board Record, p. 38].

53. The plumbing estimate by Carver Plumbing and Mechanical was dated April 9, 2009. *Supra*, ¶ 17.

54. The insurance proposal from BW Insurance Agency was dated April 10, 2009. [County Board Record, pp. 44-46].

55. The insurance proposal from Farm Bureau Insurance was dated December 22, 2008. *Supra*, ¶18.

56. The insurance proposal from Farmers Insurance was dated December 20, 2008. [County Board Record, pp. 50-51].

57. The insurance proposal from BVS Express was based on cost data as of March, 2009. [County Board Record, pp. 52-55].

58. The two market analyses prepared by Landis Benson, a real estate broker, indicated his opinion of value for Taxpayers' property, land and building, as of March 1, 2005, and June 19, 2008. *Supra*, ¶ 19.

59. The market analysis by Alison Lass, a real estate broker, indicated her opinion of value for Taxpayers' property, land and building, as of March 20, 2009. [County Board Record, pp. 58-64].

60. Ms. Treanor, as the Washakie County Assessor, in fact all Wyoming county assessors, by Wyoming statute and Department Rule, must "[f]aithfully and diligently follow and apply the orders, procedures and formulae" which the Department is statutorily required to prescribe to determine the fair market value of all local assessed property. *Supra*, ¶¶ 35, 36. The Department, by Rule, has provided for use of a CAMA system which it, the Department, provided to each Wyoming county assessor, and which included the Marshall & Swift Cost Guide. Ms. Treanor, as the Washakie County Assessor, was thus not permitted to use any different software or cost guide to value local assessed property in Washakie County as of January 1, 2009, for 2009 tax purposes. The RCNLD for all commercial buildings in Washakie County was derived by the RealWare CAMA system. *Supra*, ¶¶ 20, 21, 25, 38.

61. The evidence presented by Taxpayers to challenge the 2009 fair market value of the land associated with their commercial building was extremely limited. *Supra*, ¶ 14. Such evidence was not sufficient to overcome the presumption of validity in favor of the Assessor's value for the land in question, particularly when compared to the evidence of sales of other commercial land presented by the Assessor to support her land value. *Supra*, ¶¶ 23, 24. [County Board Record, pp. 116-120].

62. The County Board, in its Final Order, agreed with the Assessor's fair market value for the land associated with Taxpayers' building. The County Board chose, however, to calculate its own fair market value for Taxpayers' building, concluding the Marshall & Swift Cost Guide "was not an accurate reflection of commercial property in Washakie County." The County Board therefore derived its own fair market value for Taxpayers' building by applying a 7.5% per year appreciation factor to the 2007 fair market value of the building. The County Board, as a result, accepted neither the Taxpayers' proposed value nor the Assessor's 2009 value for Taxpayers' building. [County Board Record, pp. 128-131].

63. The County Board Final Order not only suffers from a lack of any substantial evidence support, but is, as well, contrary to law. The Wyoming Legislature has, by statute, clearly stated a "county board of equalization has no power to . . . engage in any administrative duties concerning assessments which are delegated to . . . the department or the county assessor." *Wyo. Stat. Ann. § 39-13-102(d)*; *Supra*, ¶ 40. The Final Order entered by the County Board violated both the letter and spirit of that statutory prohibition. It is the Department that is responsible for determining what replacement costs are appropriate, and the Assessor who is required to "[f]aithfully and diligently" adhere to the cost guide provided



by the Department. These are clearly “administrative duties concerning assessments” in which the County Board improperly engaged when it derived its own fair market value for Taxpayers’ building. *Supra*, ¶¶ 35, 36, 37.

64. The County Board Final Order entered August 18, 2009, is not supported by substantial evidence, and is clearly contrary to law.

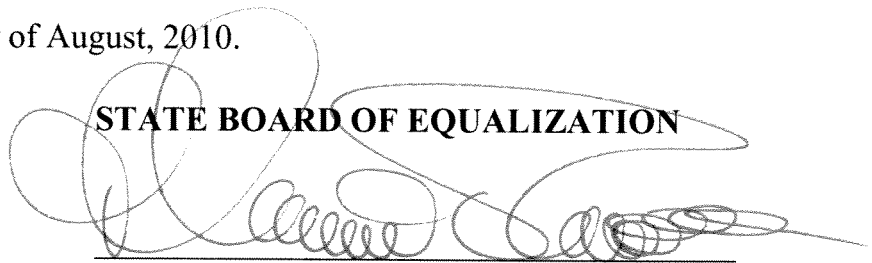
**ORDER**

**IT IS THEREFORE HEREBY ORDERED** the Washakie County Board of Equalization Order modifying the Assessor’s 2009 valuation of Taxpayers’ property 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 26<sup>th</sup> day of August, 2010.

**STATE BOARD OF EQUALIZATION**



Thomas D. Roberts, Chairman

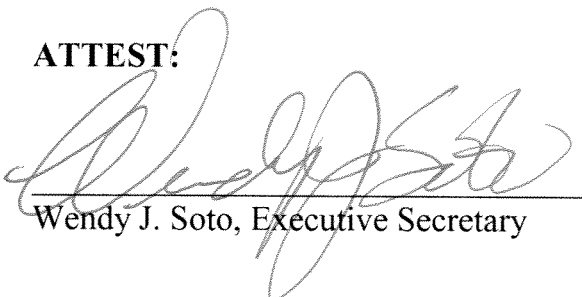


Steven D. Olmstead, Vice-Chairman



Deborah J. Smith, Board Member

**ATTEST:**



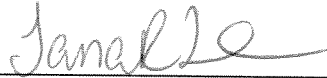
Wendy J. Soto, Executive Secretary

## CERTIFICATE OF SERVICE

I hereby certify that on the 26<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:

Mark & April Whitlock  
P.O. Box 972  
Worland, WY 82401

Kathy Treanor  
Washakie County Assessor  
1001 Big Horn Ave., Suite 104  
Worland WY 82401



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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 - Washakie County  
CCH  
ABA State and Local Tax Reporter  
State Library  
File