

**BEFORE THE STATE BOARD OF EQUALIZATION**  
**FOR THE STATE OF WYOMING**

IN THE MATTER OF THE APPEAL OF            )  
**SCOTT AND MARCILE STEWART**            )  
FROM A DECISION OF THE LINCOLN        )        Docket No. **2009-117**  
COUNTY BOARD OF EQUALIZATION        )  
- 2009 PROPERTY VALUATION            )

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**DECISION AND ORDER**

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**APPEARANCES**

Scott J. Stewart and Marcile Stewart (Taxpayers) appeared pro se.

Debbie Larson, Lincoln County Assessor (Assessor), appeared pro se.

**DIGEST**

This is an appeal from a decision of the Lincoln County Board of Equalization (County Board) dated July 31, 2009, affirming the Assessor's valuation of Taxpayers' property for 2009 tax purposes. Taxpayers' Notice of Appeal was filed with the State Board effective August 27, 2009. Taxpayers and the Assessor filed briefs as allowed by the October 9, 2009, State Board Briefing Order. Neither party requested oral argument.

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

We evaluate Taxpayers' appeal of the County Board decision against our standard of review: 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 affirm the decision of the County Board.

## **PROCEEDINGS BEFORE THE COUNTY BOARD**

The County Board conducted a hearing on July 21, 2009, at which Scott J. Stewart and Debbie Larson, Lincoln County Assessor, each testified and presented exhibits. The County Board affirmed the Assessor's 2009 fair market value for Taxpayers' real property and improvements by a written decision dated July 31, 2009. [County Board Record, Document #13, pp. 1-4].

## **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 27, 2009. *Rules, Wyoming State Board of Equalization, Chapter 3 § 2*. [State Board Record].

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

*Wyo. Stat. Ann. § 16-1-114(c)(ii)(B)*. The State Board review is limited to a determination of whether a county board’s 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).

## **ISSUES**

Taxpayers identified the following issues in their brief:

- a. Mis-classification of Property to ad-valorem contrary to Wyoming Statute(s) Recreation Park Trailer taxed as Manufactured Home, then renamed (at BOE Hearing) "Mobile Home", contrary to Wyoming Statutes Title(s) 31 and 39.
- b. One year selective property valuation increase of 33%. Capricious and Arbitrary Revaluation subsequent to Protest. Comparable properties NOT Re-valued. 2009 Property profile amended and reissued nearly doubling valuation.
- c. Apparent violation of Oath by Assessor to administer "Fair" valuation.

[*Taxpayers' Opening Brief*, p. 1]. (Emphasis removed).

The Assessor addressed the issues identified in Taxpayers' Opening Brief and generally argued Taxpayers' property was properly valued in accordance with Wyoming law. [*Assessor's Response Brief*, pp. 1–2].

Taxpayers, 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/or capriciously in affirming the Assessor's valuation of Taxpayers' property for 2009 tax purposes.

We conclude the decision of the County Board was not unlawful, arbitrary, or capricious. We further conclude there was substantial evidence in the County Board record supporting the County Board decision.

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

1. Taxpayers own real property and improvements at 412 Saddleman Drive in the Star Valley Ranch RV Park 1 Subdivision (Star Valley Ranch), Thayne, Lincoln County, Wyoming. [County Board Record, Document #2, p. 1; Hearing Recording].
2. The Assessor mailed the 2009 Notice of Assessment to Taxpayers on April 10, 2009. The Notice valued Taxpayers' real property at \$22,000 and improvements at \$57,488, for a total fair market value of \$79,488. The resulting assessed valuation was \$7,551, with estimated 2009 property taxes of \$452. [County Board Record, Document #4, p. 3; Document #20, p. 1].
3. The 2008 Notice of Assessment reflected a fair market value for Taxpayers' real property of \$22,000 and improvements of \$36,642, for a total fair market value of \$58,642, resulting in an assessed valuation of \$5,571 and estimated 2008 property taxes of \$343. [County Board Record, Document #19, p. 1].
4. Taxpayers filed a property valuation protest on May 6, 2009, asserting the Assessor overvalued their residential improvements. Taxpayers asserted their residential improvements should have been valued at \$8,000 rather than \$57,488. [County Board Record, Document #4, p. 1; Document #5, p. 2]. Taxpayers' primary contention was that their recreational park trailer had been incorrectly or unlawfully categorized by the Assessor as a "manufactured home" rather than as a vehicle or recreational vehicle, exempt from ad valorem taxation. [County Board Record, Document #4, p. 2; Document #5, p. 3; Hearing Recording].

5. The County Board held a hearing on Taxpayers' protest on July 21, 2009, at which Scott J. Stewart and Debbie Larson, Lincoln County Assessor, each presented exhibits and testified. [County Board Record, Hearing Recording].

6. The Certificate of Origin for Taxpayers' recreational park trailer describes it as a 2004 Cavco Homes, Model: CAT-250F; Width: 11.00 feet; Length & Hitch: 39.00 feet; Square Feet: 385.00; Date Manufactured: 05/21/03; Weight: 9,627; delivered to a Utah dealer. [County Board Record, Document #14, p. 2]. Taxpayers titled their recreational park trailer in Wyoming with the Lincoln County Clerk's Office on April 10, 2008. The title lists the body style as "MH." [County Board Record, Document #14, p. 1].

7. The Assessor's property diagram shows Taxpayers' recreational park trailer measured 35 feet long by 12 feet wide, with a bay window and a 157.50 square-foot addition, for a total area of 583 square feet. [County Board Record, Document #2, p. 5]. For 2009, the Assessor listed and valued Taxpayers' recreational park trailer as a "Mobile Home" of good quality and condition, built in 2004, and located in Neighborhood (Nbhd) 1256 with a neighborhood market adjustment (Nbhd Adj) of 1.5. [County Board Record, Document #2, p. 3].

8. The 2008 Property Profile for Taxpayers' property indicated the property was built in 2003 and was located in neighborhood 4001 with a neighborhood adjustment of 1. [County Board Record, Document #3, p. 3].

9. Mr. Stewart presented exhibits and testified on behalf of Taxpayers at the County Board hearing. Mr. Stewart's primary argument was that Taxpayers' recreational park trailer was not a mobile home as that term is defined by Wyoming law and was, therefore, exempt from ad valorem taxation. [County Board Record, Document #5, pp. 1-18; Hearing Recording].

10. Mr. Stewart described Taxpayers' property and improvements as follows: "I installed this recreational park trailer vehicle on my deeded land in Lincoln County, Wyoming, that I have added a roof over the patio, an outdoor kitchen and a small room to the rear. I also had a storage shed on the property." [County Board Record, Hearing Recording].

11. The photographs and diagram of Taxpayers' recreational park trailer show a slab roof ceiling extending the length of the recreational park trailer, from the ridge line of the trailer's roof, 15 feet beyond the side of the trailer, covering the room addition and the patio area. No hitch used for towing the trailer was visible. Skirting had been added. The photos clearly show the addition attached to Taxpayers' recreational park trailer with siding extending to the ground. A driveway, walkway and shed are also visible. [County Board Record, Document #2, pp. 4-5; Document #5, p. 14].

12. Mr. Stewart noted the measurements used by the Assessor differed from the measurements listed on Taxpayers' title. He explained the difference by stating ANSI [American National Standards Institute] standards remove window and door measurements to accommodate the federal exemption for vehicles with an area of 400 square feet or less. [County Board Record, Hearing Recording]. He did not provide a copy of the ANSI standard or discuss how the 157.5 square foot addition should be treated.

13. Taxpayers provided photographs of three different certification plates: one for a manufactured home, one for a recreational park trailer, and one for a recreation vehicle. Each certification plate indicated compliance with a manufacturing standard. The certification for the manufactured home stated the manufactured home was constructed in conformance with the Federal Manufactured Home Construction and Safety Standards in effect on the date of manufacture. The recreational park trailer certification stated the manufacturer complied with the standard for RV park trailers, ANSI A119.5. The recreational vehicle certification stated the manufacturer complied with the standard for recreational vehicles, ANSI No. 119.2, and the National Electrical Code, ANSI/NFPA No. 70. [County Board Record, Document #10, pp. 8-9]. Taxpayers did not testify, however, to the specific distinguishing characteristics of the trailers to which the different certification plates were attached.

14. Taxpayers presented three letters at the County Board hearing, two from insurance agencies and one from Star Valley Ranch. A letter dated May, 21, 2009, from a State Farm Insurance Agent provided a definition for a "park model" from a State Farm Underwriter and stated only homes "built to HUD standards qualify for the Manufactured Home program." [County Board Record, Document #5, p. 10]. An undated letter from a Farm Bureau Financial Services agent stated: "Due to underwriting guidelines we are unable to insure Scott & Marcille Stewart's park model." [County Board Record, Document #5, p. 11]. A letter dated June 17, 2009, on Star Valley Ranch letterhead, stated "Leisure Valley, Inc. dba Star Valley Ranch does not allow manufactured homes in our RV Park. We allow Recreational Park Trailers (Park Models) which are Recreational Vehicles." [County Board Record, Document #5, p. 12].

15. Mr. Stewart also presented a letter from the United States Department of Housing and Urban Development he received the day before the County Board hearing. The letter dated, July 8, 2009, stated it was "only intended to clarify the definition of a recreational park trailer." It stated "[t]he Department of Housing and Urban Development (HUD), Office of Manufactured Housing Programs does not regulate recreational park trailers and these trailers do not meet the definition of a manufactured home under the Federal Manufactured Home Construction and Safety Standards 24 CFR 3280.2." [County Board Record, Document #5, pp. 17-18].

16. Mr. Stewart expressed his concern about tax inequity at the County Board hearing. He said his concern began when the Assessor made a statement in 2008. He understood her to say she was under pressure from the state to be very aggressive and very thorough in fairly assessing property in Lincoln County because of the gravity of the tax situation statewide. [County Board Record, Hearing Recording].

17. Mr. Stewart expressed his opinion the Assessor violated her oath of office and applicable law by classifying Taxpayers' park model trailer as a residential dwelling with additional improvements either attached or on Taxpayers' property rather than a recreational vehicle. [County Board Record, Hearing Recording].

18. Mr. Stewart stated he contacted office of the Wyoming Attorney General to report what he perceived as improper and illegal actions by the Assessor. He was referred to the Lincoln County Sheriff who directed him to the county clerk to see if the title to his park model trailer could be changed from a mobile home/manufactured home designation to a recreational vehicle designation. [County Board Record, Hearing Recording].

19. Mr. Stewart provided a list of six properties, Taxpayers' property and five other properties. He included names, addresses, valuation information, and photographs for each property and calculated a percent change in valuation from 2008 to 2009 for five of the six properties.

- A. Taxpayers' land at 412 Saddleman Drive was valued at 22,000 for 2009 and 2008. The improvements were valued at \$57,488 for 2009 and \$36,642. Taxpayers represented there was a 33% increase from 2008 to 2009.
- B. Land at 425 Saddleman Drive was valued at \$30,000 for 2008 and 2009. The improvements were valued at \$61,478 for 2009 and \$60,741 for 2008. Taxpayers represented there was a 1.2% increase from 2008 to 2009.
- C. Land at 504 Rim Road was valued at \$37,000 for 2009 and 2008. The improvements were valued at \$44,696 for 2009 and \$42,776 for 2008. Taxpayers represented there was a 1.3% increase from 2008 to 2009.
- D. Land at 31 Doubletree was valued at \$27,000 for 2009 and 2008. The improvements were valued at \$27,538 for 2009 and \$26,604 in 2008. Taxpayers represented there was a 304% increase from 2008 to 2009.



- E. Land at 451 Rim Road was valued at \$47,200 for 2009 and 2008. The improvements were valued at 35,5453 for 2009 and \$34,388 for 2008. Taxpayers represented there was a 3.3% increase from 2008 to 2009.
- F. The land, with improvements, at 259 Oxbow was identified as a comparable by Taxpayers. It was listed as vacant by the Assessor.

[County Board Record, Document #5, pp. 13-15; Hearing Recording].

20. Mr. Stewart asserted his property increased 10 times more than the 5 other comparable properties. Mr. Stewart also expressed concern that one of the properties he identified, 259 Oxbow, was listed as vacant by the Assessor even though Mr. Stewart believed it had been in Star Valley Ranch for three to four years. [County Board Record, Document #5, pp. 13, 15; Hearing Recording]. Mr. Stewart did not compare the characteristics of the other properties with his property.

21. Mr. Stewart stated NADA [National Automobile Dealers Association] published a book showing recreational vehicles such as his 2004 Cavco Catalina decreased in value from an original purchase price of approximately \$37,000 to a current worth of about \$15,000. He noted the current value of a 2009 Cavco Catalina was \$32,000. He suggested Taxpayers' property should depreciate much like a car or a truck. [County Board Record, Hearing Recording].

22. The hearing officer, with the consent of the parties, asked the County Clerk to explain the codes used by her office on motor vehicle titles. The County Clerk's unsworn statement was that only two applicable body style codes were available for Taxpayers' certificate of title: one (MH) for a mobile home and one for a house trailer. [County Board Record, Hearing Recording].

23. Ms. Larson, the Lincoln County Assessor, testified at the County Board hearing and provided exhibits addressing the valuation of Taxpayers' property and Taxpayers' concerns.

24. Ms. Larson explained the increase in the fair market value of Taxpayers' property from 2008 to 2009. She attributed the increase to a correction she made to the neighborhood where Taxpayers' property was located. [County Board Record, Hearing Recording].

25. Taxpayers' property in 2008 was listed for assessment purposes in Neighborhood 4001 where there was no neighborhood value adjustment. Ms. Larson explained neighborhood 4001 was intended for mobile homes where the land was owned by someone

other than the mobile home owner. [County Board Record, Document #2, p. 3; Hearing Recording].

26. For the 2009 assessment, the Assessor corrected the location of Taxpayers' property to neighborhood 1256. She explained neighborhood 1256 was used when a mobile home and land were owned by the same person. For this neighborhood, sales reflected a need to increase values by 50% to reach fair market value. A neighborhood adjustment of 1.5 was applied by the Assessor. [County Board Record, Document #1 , p. 3; Hearing Recording].

27. Ms. Larson explained the property at 259 Oxbow, listed as vacant by the Assessor, had not been assessed because it was titled in another state and had not been discovered by her office. [County Board Record, Hearing Recording].

28. Ms. Larson conceded Taxpayers' recreational park trailer was not constructed in compliance with the Federal Manufactured Home Construction and Safety Standards. She noted it was more than eight and one-half (8 ½) feet wide and, therefore, not an RV. [County Board Record; Hearing Recording].

29. It was Ms. Larson's opinion Taxpayers' recreational park trailer was taxable because it was over eight and one-half feet in width, was currently titled in Wyoming as a mobile home, and was not clearly exempt. [County Board Record, Hearing Recording].

30. Ms. Larson indicated Taxpayers' park model trailer on a concrete slab was not altered to the extent necessary to treat it as real property. She continued, therefore, to value it as a mobile home. [County Board Record, Document #2, p. 3; Hearing Recording].

31. The County Board issued a written decision on July 31, 2009, affirming the Assessor's 2009 fair market valuation of Taxpayers' property. The County Board concluded Taxpayers' property was "taxable and the taxpayer has not presented any cogent argument or reasoning otherwise." [County Board Record, Document # 12, pp. 1-4].

32. Taxpayers appealed the County Board decision to the State Board effective August 27, 2009. [State Board Record].

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

33. The State Board is authorized to "hear appeals from county boards of equalization." *Wyo. Stat. Ann. § 39-11-102.1(c)*. Taxpayer filed a timely appeal of the July 31, 2009, County

Board decision with the State Board effective August 27, 2009. *Rules, Wyoming State Board of Equalization, Chapter 3 § 2.*

### **Applicable Law**

34. 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.”

35. 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.”

36. 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).

37. 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)*.

38. 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)*.

39. 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)*.

40. A county assessor takes the following oath or affirmation before entering upon the assessor’s duties:

“I, .... having been elected assessor of .... county, state of Wyoming, do solemnly swear (or affirm) that I will faithfully and impartially perform the duties of assessor of the county of ....., state of Wyoming, according to law and to the best of my ability, and that I will without fear or favor assess all taxable property within the county of ....., at its fair value. So help me God”.

*Wyo. Stat. Ann. § 18-3-202.*

41. The Department of Revenue (Department) has a 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 Department 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.*

43. 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).

44. 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).

45. 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.

46. 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.

47. 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); *Schouboe v. Wyo. Dep’t of Transportation*, 2010 WY 119, ¶ 12, 238 P.3d 1246, 1249 (Wyo.2010).

48. “All property within Wyoming is subject to taxation as provided by this act except as prohibited by the United States or Wyoming constitutions or expressly exempted by W.S. 39-11-105.” *Wyo. Stat. Ann. § 39-11-103(a)(i)*.

49. “Under Wyoming’s tax laws, there are three types of property: intangible personal property, real property, and tangible personal property.” *Amoco Production Co. v. Wyoming State Bd. of Equalization*, 15 P.3d 728, 732 (Wyo. 2001).

50. “‘Real property’ means land and **appurtenances, including structures, affixed thereto**, and any intangible characteristic which contributes to the fair market value thereof.” *Wyo. Stat. Ann. § 39-11-101(a)(xv)* (emphasis added). “‘Tangible personal property’ means personal property that, by its nature, is perceptible to the senses; property that has a physical presence beyond merely representational and that is capable of being touched; property that is able to be perceived as materially existent; property that is not intangible;” *Wyo. Stat. Ann. § 31-11-101(a)(xvi)*.

51. The Wyoming Supreme Court has adopted the ordinary meaning of the term “appurtenances.”

The term ‘appurtenances’ is not defined within the statutes. In its ordinary sense, the term means:

That which belongs to something else; an adjunct; an appendage. Something annexed to another thing more worthy as principal, and which passes as incident to it, as a right of way or other easement to land; an outhouse, barn, garden, or orchard, to a house or messuage. (Citation omitted.) An article adapted to the use of the property to which it is connected, and which was intended to be a permanent accession to the freehold. A thing is deemed to be incidental or appurtenant to land when it is by right used with the land for its benefit, as in the case of a way, or watercourse, or of a passage for light, air, or heat from or across the land of another.

Black's Law Dictionary, Sixth Ed. 103 (1990) (emphasis added). For the flow lines to be considered appurtenant to the land, then, they must be connected to the land in a manner intended to be permanent, and they must benefit the land.

\* \* \*

Therefore, to determine if the [objects] are appurtenant to the real estate, we look to determine whether: (1) the object is connected or attached to the realty; (2) the appropriation or adaptation of the object is related to the use or purpose of that part of the realty to which it is connected or attached; and, (3) the party making the attachment or connection objectively intended a permanent accession to the freehold with that intention being inferred from the nature of the object affixed, the purpose it serves on the land, and the party's relationship to the object and the land.

*Amoco Production Co. v. Wyoming State Bd. of Equalization, supra*, 15 P.3d 732-733.

52. In *Milnes v. Milnes* the Wyoming Supreme Court addressed the question of whether a manufactured home was real or personal property.

[¶ 8] The district court concluded that the manufactured home was real property that went with the land on which it was located. That conclusion was based upon these findings:

a. [N]o Certificate of Title for the Home was introduced by [Coray], but [he] did introduce a certificate of origin for a manufactured home;

b. the Home has been taxed as a mobile home by the Platte County Treasurer separate from the tax assessments of the real property, Exhibits N-1 to N-5, Exhibit K.

c. there are no axles, wheels, or a hitch attached to the Home;

d. the Home is set on concrete blocks sitting upon poured concrete slabs in the crawl space placed on the real property for such purpose, Exhibit 6-1; 6-2; 6-3; 6-4 and 6-6;

e. there are cables attached to the home [which] are bolted into 6" thick concrete slabs in the crawl space. Exhibits 6-5, 6-6, 6-8, 6-9. Witness Jim Parks testified that such manner of attaching tie-down cables was more permanent than normal mobile home installation required by insurance carriers in the State of Wyoming;

f. the Home has a landscaped yard with trees and fencing around [the] house, Exhibits 6-12, 6-13, 6-14, 6-17, 6-18, 6-19, 6-20, and 6-21;

g. there is a permanent, stick-built garage (the "Garage") located with ten (10) ft. from Home, which, it is not disputed, is part of the real property. The Garage was constructed by the decedent within a few months after installation of the Home and used by her during her occupancy of the home. Exhibits 6-10, 6-11, 6-12, 6-16, and 6-18.

h. the Home and the permanent Garage appear to be a single living unit;

i. the Home has wood skirting with interior framing and exterior siding to the ground. Exhibits 6-6, 6-7, 6-14, 6-15, 6-16, 6-17, 6-18, and 6-19;

j. there are permanent underground utility services installed to the Home;

k. the Home has a permanent exterior rear deck that was constructed and attached to the Home after its delivery and installation, Exhibit 6-13;

l. the Home has a permanent rear covered porch that was constructed and attached to the Home after its delivery and installation, Exhibit 6-10;

m. the Home has an air conditioning unit permanently installed near the rear covered porch that was constructed next to the Home after its delivery and installation, Exhibit 6-10;



n. the Home has permanent gutters and drain spouts installed after the delivery and installation of the Home on the property, Exhibits 6-10, 6-14 and 6-15;

o. the Home is located upon an eighty (80) acre parcel of real estate with no other residential structures located upon such parcel; that tract was zoned for placement of cement pads to set a mobile home on;

p. the decedent, Shirley Milnes, resided in the Home from the date of its installation to the date of her final hospitalization, a period of approximately five (5) years;

q. no evidence was introduced indicating that the decedent treated the Home as anything other than her permanent residence;

r. that the insurance coverage for the Home purchased by the decedent included coverage for the permanent Garage. Exhibit J, Page 3.

s. in totality, although the Home could have been made moveable, it was permanently attached to the real estate. The evidence as a whole indicates that Shirley intended that the house be a permanent part of the real estate.

[¶ 9] The district court went on to conclude that its factual determination was supported by pertinent law. For example, although Mother had not done so, Wyoming statutes provide that a transportable or mobile home can be converted to real property. Wyo. Stat. Ann. § 31-2-502(b) (LexisNexis 2007). Ordinarily “mobile homes” like the one at issue are taxed as personal property, and that was true of Shirley's. While this Court has not dealt with the specific issue raised in this dispute, we have recognized a general rule that a chattel, or moveable, may become a fixture that becomes a part of the real estate on which it is affixed. In *Wyoming State Farm Loan Board v. FCSCC*, 759 P.2d 1230, 1234 (Wyo.1988) we opined:

This court has not had occasion to discuss this aspect of the law of fixtures for nearly forty-eight years. *See School District No. II, Laramie County v. Donahue*, 55 Wyo. 220, 97 P.2d 663, 664 (1940). When presented with this issue, however, we still rely on the three-part test first set forth in the landmark case of *Teaf v. Hewitt*, 1 Ohio St. 511, 525 (1853):

“It has been said upon abundant authority that, generally speaking, the proper criterion of an irremovable fixture consists in the united application of three tests, viz:

“ ‘1st. Real or constructive annexation of the article in question to the realty.

“ ‘2d. Appropriation or adaptation to the use or purpose of that part of the realty with which it is connected.

“ ‘3d. The intention of the party making the annexation to make the article a permanent accession to the freehold, this intention being inferred from the nature of the article affixed, the relation and situation of the party making the annexation and policy of the law in relation thereto, the structure and mode of the annexation and the purpose or use of which the annexation has been made.’ [Citations.] \* \* \*.” *Holland Furnace Co. v. Bird*, 45 Wyo. 471, 21 P.2d 825, 827-828 (1933).

Also see Wyo. Stat. Ann. § 39-11-101(a)(xv) (LexisNexis 2007) (defining “real property” as “land and appurtenances, including structures, affixed thereto, and any intangible characteristic which contributes to the fair market value thereof”); *Amoco Production Co. v. Wyoming State Board of Equalization*, 2001 WY 1, ¶ 9, 15 P.3d 728, 732-33 (Wyo.2001); *In re Claxton*, 239 B.R. 598, 34 Bankr.Ct.Dec. 1323 (U.S. Bankr., Ct. N.D. OK 1999) (mobile home treated as real estate subject to mortgage); 2 Powell on Real Property § 18B.04 (Michael Allan Wolf ed., LexisNexis Matthew Bender & Co.2000) (“... if the mobile home has substantially lost its identity as a mobile home by virtue of its being permanently affixed to the land, it would be taxed as realty....”).

[¶ 10] We hold that the district court's factual findings with respect to the manufactured home are not clearly erroneous and its conclusions of law are correct. More specifically, we do not view the fact that the manufactured home had, historically, been taxed as personal property as determinative of the issue. The district court properly included all relevant facts and circumstances in reaching its decision.

*Milnes v. Milnes*, 2008 WY 11, ¶¶ 7–10, 175 P.3d 1164, 1167–1168 (Wyo. 2008).

53. Exemptions from taxation are not favored.

First, exemptions are not favored and generally taxation is held to be the rule and exemption the exception, which means there is a presumption against a

grant of exemption and in favor of the taxing power. *Appeal of Chicago & North Western Ry. Co.*, 70 Wyo. 84, 246 P.2d 789, 795, rehearing denied 70 Wyo. 119, 247 P.2d 660; *State Tax Commission v. Graybar Electric Company, Inc.*, 86 Ariz. 253, 344 P.2d 1008, 1012; *Cornell College v. Board of Review of Tama County*, 248 Iowa 388, 81 N.W.2d 25, 26. See also 84 C.J.S. Taxation § 225, pp. 431-432.

*State Bd. of Equalization v. Wyoming Auto. Dealers Ass'n*, 395 P.2d 741, 742 (Wyo. 1964).

54. The exemptions at issue in this matter are set forth in Wyoming Statutes section 39-11-105, which provides in pertinent part:

(A) The following property is exempt from property taxation:

\* \* \*

(xi) **Personal property** held for personal or family use **excluding mobile homes required to be titled under W.S. 31-2-501 through 31-2-508;**

\* \* \*

(xiii) **Vehicles subject to registration** as defined by W.S. 31-4-101(a)(i) and 31-18-201(a) **and registered** as provided by law;

*Wyo. Stat. Ann. § 39-11-105(a)(xi) & (xiii)* (emphasis added). Real property is not exempt unless owned by specified entities and used for specified purposes. See *Wyo. Stat. Ann. § 39-11-105(a)(i) through (x), (xvi), (xviii) through (xix), (xxii), (xxiii) (xxv) through (xxviii), (xxxii), (xxxiii), (xxxv) through (xxxvii)*. There is no question Taxpayers' lot in Star Valley Ranch is real property subject to ad valorem taxation. *Supra* ¶¶ 1, 10.

55. Wyoming Statutes governing the titling of mobile homes provide in pertinent part as follows:

§ 31-2-501. Definitions; application required.

(a) As used in this act:

(i) The definitions in W.S. 31-1-101 apply;

(ii) **“Mobile home” means a transportable home defined in W.S. 31-1-101(a)(xxiv)(C);**

(iii) “Mobile home dealer” means as defined in W.S. 35-18-102(a)(v) but includes a finance agency as defined in W.S. 34.1-2-104;

(iv) “This act” means W.S. 31-2-501 through 31-2-508.

(b) Except as provided by W.S. 31-2-502, every owner of a mobile home located in this state for which no Wyoming certificate of title has been issued to the owner, or the transferee upon transfer of ownership of a mobile

home, shall apply for a certificate of title at the office of a county clerk within thirty (30) days of the date the mobile home became subject to this act, or upon a transfer, within thirty (30) days of the date of transfer.

§ 31-2-502. Exclusions.

(a) No certificate of title shall be issued or required for mobile homes:

- (i) Owned by the United States;
- (ii) Being transported from a point outside this state;
- (iii) Held for sale by a Wyoming mobile home dealer;
- (iv) **Installed on a permanent foundation, taxable as real**

**property and which has no current title under this act.**

(b) If a mobile home is installed on a permanent foundation and is taxable as real property, the certificate of title or manufacturer's certificate of origin, if any, shall be surrendered to and cancelled by the county clerk of the county in which the mobile home is located except that no title shall be cancelled under this subsection unless all liens on the home have been released. The county clerk may require the person surrendering the title for cancellation to disclose information necessary to determine whether cancellation is proper under law.

§ 31-2-507. Prohibited acts; penalties.

(a) No person shall knowingly make any false statement in any application or other document required under this act.

(b) No person shall sell or transfer his interest in a mobile home for which a certificate of title is required unless he has obtained a certificate and assigns his interest on the title except as otherwise provided by this act.

(c) Any person who violates any provision of W.S. 31-2-503 through 31-2-505 and this section is guilty of a felony punishable by a fine of not more than five thousand dollars (\$5,000.00), imprisonment for not more than two (2) years, or both. Any person who violates W.S. 31-2-508 is guilty of a misdemeanor punishable by a fine of not more than seven hundred fifty dollars (\$750.00), imprisonment for not more than six (6) months, or both.

§ 31-2-508. Payment of taxes, receipt and over-width permit for transportable homes.

**Before any transportable home or portion thereof, whose original movement commences within the state of Wyoming is conveyed upon any street or highway, the owner shall present a proof of ownership for each portion of a prebuilt or modular home, or a certificate of title if for a mobile home, to the county treasurer of the county in which the**

**transportable home is located, and pay the current year's taxes as computed by the county treasurer. In the event the ad valorem levy has not been set for the current year, the current year's tax shall be computed upon the levy for the previous year.** Upon full payment of the current year's taxes due, the county treasurer shall issue a receipt describing the transportable home and indicating the current year's taxes are paid. Upon presentation of the receipt to the director of the department of transportation, or his authorized representative, the owner may be issued an over-width permit. Payment of the taxes due on a transportable home is not required for the issuance of an over-width permit if the transportable home is abandoned and is moved pursuant to W.S. 31-13-101 through 31-13-116. **As used in this section, "transportable home" means as defined in W.S. 31-1-101(a)(xxiv).**

*Wyo. Stat. Ann. §§ 31-2-501, 31-2-502, 31-2-507 & 31-2-508* (emphasis added).

56. Wyoming Statutes section 31-1-101(a) provides the following definitions pertinent to this matter:

(xxiii) "Trailer" means a vehicle without propelling power designed to be drawn by a motor vehicle, but excludes converter gear, dollies and connecting mechanisms. The term includes the following vehicles as hereafter defined:

(A) "House trailer" means every trailer which is:

(I) Designed, constructed and equipped as a dwelling place, living abode or sleeping place, either permanently or temporarily;

(II) Equipped for use as a conveyance on streets and highways; and

(III) Eight and one-half (8 ½) feet or less in width, excluding appurtenances, or more than eight and one-half (8 ½) feet in width and used primarily as a mobile laboratory or mobile office.

(B) "Semitrailer" means a trailer so designed and used in conjunction with a motor vehicle that some part of its weight and that of its load rests upon or is carried by another vehicle, but excludes converter gear, dollies and connecting mechanisms;

(C) "Utility trailer" means any trailer less than six thousand (6,000) pounds gross vehicle weight.

(xxiv) "Transportable home" means and includes the following as defined:

(A) “Modular home” means a residential dwelling constructed in a factory to a residential construction code other than the Federal Manufactured Home Construction and Safety Standards;

(B) “Prebuilt home” means any residential dwelling that is wholly, or in substantial part, made, fabricated, formed or assembled in manufacturing facilities for installation or assembly on a building site. Prebuilt home shall include, but not be limited to, a manufactured home, modular home and mobile home; or

**(C) “Manufactured home” means a residential dwelling built in accordance with the Federal Manufactured Home Construction and Safety Standards which is a unit more than eight and one-half (8 ½) feet in width which is designed, constructed and equipped as a dwelling place, living abode or place of business to which wheels may be attached for movement upon streets and highways except a unit used primarily as a mobile laboratory or mobile office.**

\* \* \*

(xxvi) "Vehicle" means a device in, upon or by which any person or property may be transported or drawn upon a highway, excluding devices moved by human power or used exclusively upon rails or tracks, implements of husbandry, machinery used in construction work not mainly used for the transportation of property over highways and pedestrian vehicles while operated by a person who by reason of a physical disability is otherwise unable to move about as a pedestrian;

*Wyo. Stat. Ann. § 31-1-101(a)(xxiii), (xxiv) & (xxvi)* (emphasis added). There is no separate statutory definition in this section for “recreational park trailer,” “mobile home,” or “recreational vehicle.”

57. The U.S. Department of Housing and Urban Development (HUD) regulates the construction of mobile/manufactured homes pursuant to the provisions of the National Manufactured Housing Construction and Safety Standards Act of 1974 (Act). *42 U.S.C. §§ 5401, et seq.*

58. The definitions in the Act pertinent to this case include the following:

(6) “manufactured home” means a structure, transportable in one or more sections, which, in the traveling mode, is **eight body feet or more in width or forty body feet or more in length**, or, when erected on site, is **three hundred twenty or more square feet**, and which is built on a permanent chassis and **designed to be used as a dwelling with or without a permanent**

**foundation** when connected to the required utilities, and includes the plumbing, heating, air-conditioning, and electrical systems contained therein; except that such term shall include any structure which meets all the requirements of this paragraph except the size requirements and with respect to which the manufacturer voluntarily files a certification required by the Secretary and complies with the standards established under this chapter; and except that such term shall not include any self-propelled recreational vehicle;

(7) **“Federal manufactured home construction and safety standard” means a reasonable standard for the construction, design, and performance of a manufactured home which meets the needs of the public including the need for quality, durability, and safety;**

(8) “manufactured home safety” means the performance of a manufactured home in such a manner that the public is protected against any unreasonable risk of the occurrence of accidents due to the design or construction of such manufactured home, or any unreasonable risk of death or injury to the user or to the public if such accidents do occur;

*42 U.S.C § 5402(6)-(8) (emphasis added).*

59. In accordance with the provisions of the National Manufactured Housing Construction and Safety Standards Act of 1974, 42 U.S.C. § 5403(a), the HUD secretary promulgated the Manufactured Housing Construction and Safety Standards in 1976. *24 C.F.R. § 3280 (2008).*

60. The Manufactured Housing Construction and Safety Standards exclude certain recreational vehicles from compliance with parts of HUD’s Manufactured Housing Construction and Safety Standards.

(g) Recreational vehicles. Recreational vehicles are not subject to this part [3282], part 3280, or part 3283. A recreational vehicle is a vehicle which is:

- (1) Built on a single chassis;
  - (2) 400 Square feet or less when measured at the largest horizontal projections;
  - (3) Self-propelled or permanently towable by a light duty truck;
- and
- (4) Designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel, or seasonal use.

*24 C.F.R. § 3282.8(g).*

## Discussion

61. Taxpayers have the initial burden of presenting sufficient evidence to overcome the presumption in favor of the Assessor. If Taxpayers meet their initial burden, the burden of going forward shifts to the Assessor to defend the valuation. The ultimate burden of proof - burden of persuasion - is, however, always borne by the protesting Taxpayers. We thus consider Taxpayers' assertions in light of this authority. *Supra* ¶¶ 44–45. This is particularly true in a case such as this where the Taxpayers seek to exempt property from taxation. *Supra* ¶ 53.

62. The County Board's decision contains two separate conclusions important to Taxpayers' appeal. First, the County Board concluded “. . . the property at issue in fact has been improved with driveways, walkways, sheds, porch and landscaping. Notwithstanding the definition placed upon the property, mobile home, modular home prebuilt home or other, the property is taxable under Milnes v. Milnes . . .” Second, the County Board concluded “[t]axpayer's property is not a mobile home under the definition in 31-2-501(a)(ii) and W.S. 31-1-101(a)(xxiv)(C). However, taxpayer fails to take into account 31-2-501(a)(i) 'The definitions in W.S. 31-1-101 apply.' Recognizing that the definitions apply, taxpayers property becomes a 'Transportable home' 31-1-101(xxiv)(A) 'Modular home' or (B) 'Prebuilt home'. Under either definition, the property is taxable and not exempt.” [County Board Record, Document #12, pp. 2, 3]. Either County Board conclusion, unless arbitrary, capricious, unsupported by substantial evidence, and/or contrary to law, would be sufficient for the State Board to affirm the County Board. *Rules, Wyoming State Board of Equalization, Chapter 3 § 9. Supra Standard of Review.*

63. In light of the County Board's first conclusion, *id.*, the State Board's analysis must begin with an examination whether Taxpayers' recreational park trailer is real or personal property. If the County Board determination was correct, the question of whether Taxpayers' recreational park trailer is exempt from ad valorem taxation as personal property is moot. *Supra* ¶ 54.

64. We find ample evidence in the record to support the County Board conclusion Taxpayers' recreational park trailer was taxable as real property. *Supra* ¶ 62. Taxpayers have connected or attached their recreational park trailer to their lot. They have removed the hitch used to pull the trailer. They have attached a 157.5 square-foot room and added outdoor kitchen to the side of their recreational park trailer and covered both the addition and kitchen with a slab roof ceiling supported on one side by the ridge of their trailer's roof. Taxpayers have also improved their lot with a driveway, walkway, shed, skirting and landscaping



evidencing their intent to adapt the recreational park trailer to the use of their real estate. *Supra* ¶¶ 7, 10, 11, 50–51.

65. Taxpayers’ recreational park trailer meets the requirements for it to be considered appurtenant to their real estate. First, it serves the purpose of the realty to which it is connected, a lot in Star Valley Ranch. Second, Taxpayers’ intention for it to be a permanent accession to the lot may be inferred by the purpose it serves and its use on Taxpayers’ land in Star Valley Ranch as a residence. Third, the recreational park trailer is attached to the real property by the 157.5 square-foot addition and the slab roof ceiling over the addition, patio and outdoor kitchen. *Supra* ¶¶ 10, 11. Taxpayers’ recreational park trailer is a structure affixed to Taxpayers’ lot and, therefore properly classified as real property. *Supra* ¶¶ 50–52.

66. Taxpayers’ recreational park trailer “installed” on their lot in Star Valley Ranch shares several of the characteristics which the Wyoming Supreme Court found sufficient to support a determination that a mobile home was real property. Those characteristics include: an attached 157.5 square-foot addition with siding to the ground which appears to be part of a single living unit, the absence of an attached hitch, landscaping, a slab ceiling roof attached to the recreational park trailer’s ridge, skirting, and an outdoor kitchen. *Compare: Milnes* ¶ 8(c), (f), (g), (h), (i), (k), (l) & (o), *supra* ¶ 52, with ¶¶ 10 & 11, *supra*.

67. Having found the County Board correctly concluded Taxpayers’ recreational park trailer was real property as defined by *Wyo. Stat. Ann. 39-11-101(a)(xv)*, *supra* ¶ 50, it is not necessary for us to address Taxpayers’ arguments based on the personal property exemption found at *Wyo. Stat. Ann. § 39-11-105(a)(xi)*. *See supra* ¶¶ 9, 15, 28-29, 54–60.

68. Taxpayers argue the Assessor’s 2009 valuation of their property was arbitrary or capricious, citing the evidence provided to the County Board indicating the value of their property increased significantly when compared to increases in value of other properties selected by Taxpayers. *Supra* ¶ 19. The Assessor explained the increase in the valuation as a function of a neighborhood change made to reflect Taxpayers’ ownership of their lot in Star Valley Ranch. The neighborhood change resulted in a 50% increase in value based on the market adjustment applied to property in the new neighborhood. *Supra* ¶ 24–26. Taxpayers did not provide evidence showing the change in neighborhood was not warranted or otherwise explain why the increase in value was not justified. Taxpayers’ assertion that “adjacent properties as of 21 July 2009 were still assessed in neighborhood 4000” [State Board Record, *Taxpayers’ Opening Brief*, p. 3] was not supported by evidence or testimony at the County Board hearing. Neither the evidence of different percentage changes in the valuations for selected properties, nor Taxpayers’ assertion regarding the neighborhood assigned to other properties was sufficient to overcome the presumption of validity in favor of the Assessor’s value. *Supra* ¶ 43–45.

69. Taxpayers provided testimony concerning the “blue book” value of their recreational park trailer. *Supra* ¶ 21. They did not, however, provide the “blue book” or address how the 157.5 square-foot addition or ceiling would affect the “blue book” value. Taxpayers’ testimony, without more, was insufficient to overcome the presumption of validity in favor of the Assessor’s value. *Supra* ¶ 43-45.

70. Taxpayers brief included a list of statements attributed to the Assessor which Taxpayers assert were false. We have reviewed the statements and find they represent nothing more than areas where the Assessor and Taxpayers disagreed with respect to the valuation of Taxpayers’ recreational park trailer or a disagreement between the parties regarding what was meant by a statement. We perceive nothing knowingly or corruptly false in the statements. *See Wyo. Stat. Ann. § 6-5-301; Edwards v. State*, 577 P.2d 1380, 1382-1383 (Wyo. 1978).

71. Taxpayers argue the County Board hearing recording does not include the Assessor’s closing argument. [State Board Record, *Taxpayers’ Opening Brief*, p. 1]. Taxpayers did not offer any insights into what the Assessor may have said or the impact of any argument on their case, the County Board decision or the State Board review of that decision. We, therefore, will treat the absence of the Assessor’s argument in the same manner as the Wyoming Supreme Court treats the absence of an entire transcript on appeal.

When this Court does not have a properly authenticated transcript before it, it must accept the trial court's findings of fact upon which it bases any decisions regarding evidentiary issues. *Capshaw v. Schieck*, 2002 WY 54, ¶ 21, 44 P.3d 47, ¶ 21 (Wyo.2002). The failure to provide a transcript does not necessarily require dismissal of an appeal, but our review is restricted to those allegations of error not requiring inspection of the transcript. Lacking a transcript, or a substitute for the transcript, the regularity of the trial court's judgment and the competency of the evidence upon which that judgment is based must be presumed. *Stadtfeld v. Stadtfeld*, 920 P.2d 662, 664 (Wyo.1996); *Combs v. Sherry-Combs*, 865 P.2d 50, 55 (Wyo.1993); and *see Wood v. Wood*, 865 P.2d 616 (Wyo.1993) (dismissing appeal for lack of record, rather than affirming).

*Burt v. Burt*, 2002 WY 127 ¶ 7, 53 P.3d 101, 103 (Wyo. 2002); *quoted in Harshberger v. Harshberger*, 2005 WY 99 ¶ 3, 117 P.3d 1244, 1246-1247 (Wyo. 2005). We base our decision in this matter on a review of the record before us with the presumption the County Board had a proper basis for its decision, without regard for what the Assessor may have said in any closing argument.

72. The Assessor's valuation of Taxpayers' recreational park trailer as a mobile home does not conflict with our conclusion the County Board correctly found Taxpayers' recreational park trailer was "real property" as that term is defined by *Wyo. Stat. Ann. § 39-11-101(a)(xv)*. *Supra* ¶¶ 30, 50. The Assessor has the discretion to select the method used to value property so long as the choice is appropriate and does not conflict with applicable statutes or department rules. *Supra* ¶¶ 30, 43, 44-45.

73. During our review of the record we discovered the hearing officer had solicited unsworn testimony from the County Clerk concerning a code used on the tile. *Supra* ¶ 22. While parties may waive the requirement of an oath, *United States v. Perez*, 651 F.2d 268, 273 (5th Cir.1981), we feel it appropriate to repeat our earlier admonition regarding the failure to administer an oath to a witness.

Notwithstanding these decisions, the value and purpose of the oath should not be discounted. All witnesses should be administered an oath or affirmation on the record prior to testifying at a County Board hearing. We find, however, any objection to the failure to swear witnesses at this hearing was waived by the parties and does not constitute grounds for a remand in this case.

*In re Ryan*, Docket No. 2009-24, October 21, 2009, ¶ 46, 2009 WL 3459205 ¶ 46 (Wyo. St. Bd. Eq.).

74. We have examined the entire record and conclude the decision of the County Board is supported by substantial evidence. In this case, Taxpayers failed to present sufficient evidence to prove by a preponderance of the evidence the approach used by the Assessor was not a rational method, not equally applied to all property, or did not achieve essential fairness. We further conclude, based on our review of the County Board Record, the County Board decision was neither unlawful, arbitrary, nor capricious.

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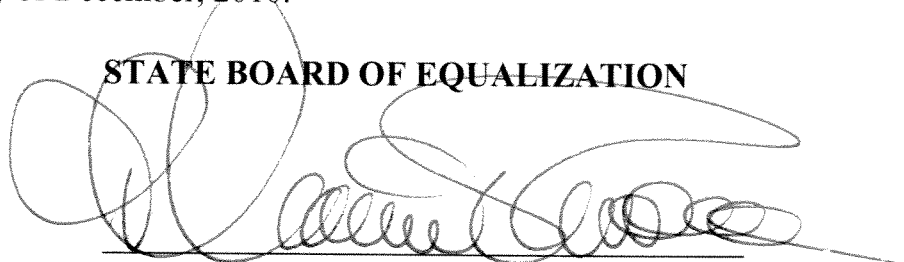
**ORDER**

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

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

**DATED** this 7<sup>th</sup> day of December, 2010.

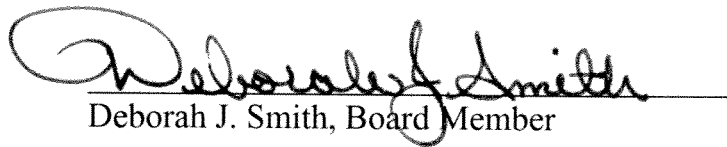
**STATE BOARD OF EQUALIZATION**



Thomas D. Roberts, Chairman

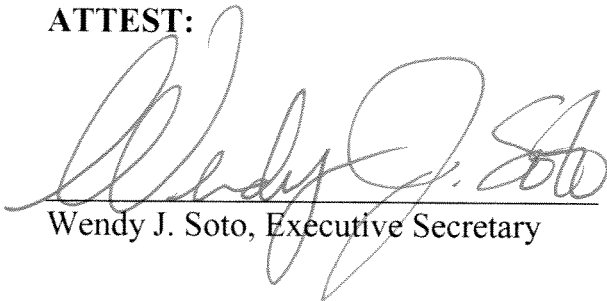


Steven D. Olmstead, Vice-Chairman



Deborah J. Smith, Board Member

**ATTEST:**



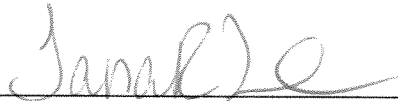
Wendy J. Soto, Executive Secretary

## CERTIFICATE OF SERVICE

I hereby certify that on the 7<sup>th</sup> day of December, 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:

Scott & Marcile Stewart  
PO Box 1474  
Thayne WY 83127

Debbie Larson  
Lincoln County Assessor  
PO Box 569  
Kemmerer WY 83101



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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  
Commissioners/Attorney/Treasurer/Clerk - Lincoln County;  
CCH  
ABA State and Local Tax Reporter  
State Library  
File