

BEFORE THE STATE BOARD OF EQUALIZATION

FOR THE STATE OF WYOMING

IN THE MATTER OF THE APPEAL OF)
JOHN AND RAMONA FINLEY FROM)
A DECISION OF THE FREMONT COUNTY) Docket No. **2009-119**
BOARD OF EQUALIZATION - 2009)
PROPERTY VALUATION)

DECISION AND ORDER

APPEARANCES

John P. and Ramona Finley (Taxpayers) appeared *pro se*.

Jodi A. Darrough, Deputy Fremont County and Prosecuting Attorney, for Eileen Oakley, Fremont County Assessor (Assessor).

DIGEST

This is an appeal from a decision of the Fremont County Board of Equalization (County Board) affirming the Assessor's valuation of Taxpayers' two farmsteads for 2009 tax purposes. The Notice of Appeal by Taxpayers was filed with the State Board of Equalization (State Board) effective August 29, 2009. The Assessor and Taxpayers filed briefs as allowed by the October 29, 2009, State Board Briefing Order. Neither party requested oral argument.

The County Board Record supplied to the State Board contained what was identified as a recording of the July 14, 2009, County Board hearing for the appeal of Taxpayers. It became apparent upon review by the State Board a portion of the County Board hearing was not included on the recording received by the State Board as part of the County Board Record. Upon inquiry, the Fremont County Clerk, as Clerk of the County Board, confirmed a portion of the County Board July 14, 2009, hearing had not been recorded.

The State Board, by Telephone Conference Order dated July 22, 2010, notified Taxpayers and the Assessor the County Board hearing had not been fully recorded, and provided both Taxpayers and the Assessor an opportunity to review the original County Board Record as

retained by the Fremont County Clerk, including the original hearing recording. The State Board Order also set a telephone conference with both parties and the State Board for August 30, 2010, to determine whether this appeal should be remanded to the County Board for re-hearing, or considered by the State Board, with the written consent of Taxpayers and the Assessor, based upon the County Board Record as supplied to the State Board. [State Board Record].

Taxpayers and the Assessor both executed and filed with the State Board on September 2, 2010, and August 31, 2010, respectively, a written Consent to Consideration Upon Partial County Board Record. [State Board Record].

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

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

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 capriciously, or abused its discretion in affirming the Assessor's value for 2009 tax purposes.

We conclude the decision of the County Board was neither unlawful, arbitrary, nor capricious. We further conclude there was substantial evidence in the County Board Record supporting the County Board decision. We affirm the decision of the County Board.

ISSUES

Taxpayers' Letter Brief does not set out specific issues, but rather generally argues the County Board failed to consider evidence indicating the Assessor used incorrect comparable properties in determining the taxable value of their farmsteads. [*Taxpayers' Letter Brief*].

The Assessor identified the following issue:

Was the decision of the Fremont County Board of Equalization supported by substantial evidence?

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

PROCEEDINGS BEFORE THE COUNTY BOARD

The County Board conducted a hearing on July 14, 2009, at which John Finley, Eileen Oakley, Fremont County Assessor, and Tara Berg, Deputy Fremont County Assessor, each testified. The County Board entered its Decision on August 1, 2009, affirming the Assessor's 2009 fair market value for Taxpayers' property. The decision was mailed to Taxpayers on August 3, 2009. [County Board Record, pp. 73-77].

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 29, 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 a county board action is:

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

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

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

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

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

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

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

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

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

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

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

FACTS PRESENTED TO THE COUNTY BOARD

1. Taxpayers own residential property [a farmstead] located at 1144 East Fork Road, Dubois, Fremont County, Wyoming. [County Board Record, pp. 3, 19; Audio Recording Track 1 - 2:20-2:46].

2. Taxpayers, on May 15, 2009, filed a Statement to Contest 2009 Property Tax Assessment challenging the land value on their farmstead, as well as the land value on a second farmstead with the same physical address owned by O. Fred and Marion D. Finley as Trustees [Trust Farmstead]. [County Board Record, pp. 1, 2, 3, 20; Audio Recording Track 1 - 2:20-2:46, 3:40-3:50].

3. The fair market land value for Taxpayers' farmstead in 2008 was \$14,000. The fair market value in 2009 for the same land was \$80,000. [County Board Record, pp. 4, 6, 19].

4. The fair market land value for the Trust Farmstead in 2008 was \$14,000. The fair market value in 2009 for the same land was \$80,000. [County Board Record, pp. 3, 5, 20].

5. Mr. Finley testified on behalf of Taxpayers as the representative for both their farmstead and the Trust Farmstead. He expressed surprise the residential value of both farmsteads increased 571% between 2008 and 2009.¹ He expressed his opinion that comparing the farmsteads at issue on the East Fork to property along the Wind River west of Dubois and the Dunior was like comparing property in Jackson Hole to the Wind River Valley. [County Board Record, p. 9; Audio Recording Track 1 - 5:09-7:56].

6. Mr. Finley suggested to the County Board property values should be based on many factors, including aesthetics and production of the land. He stated the farmsteads at issue were first devalued when the Wyoming Game and Fish Department purchased the "Thunderhead" property, and stopped irrigation of the Duncan Bench. He asserted this action dried up close to 50% of both farmsteads, and killed all the grass and willows. [County Board Record, pp. 9-10; Audio Recording Track 1 - 5:09-7:56].

7. Mr. Finley asserted a second factor which affected the value of the farmsteads at issue was the drought, which he alleged hit both farmsteads harder than anywhere in the upper Wind River. In an area he had reseeded after irrigation of the Duncan Bench had stopped, the drought killed all the seed which sprouted. He stated he had cut his livestock numbers by 50%, and would have to cut more. Although the farmsteads at issue were beginning to turn green, most the of vegetation was weeds. [County Board Record, pp. 9-10; Audio Recording Track 1 - 5:09-7:56].

8. Mr. Finley acknowledged he had mostly discussed agricultural factors but asserted residential land needed more than a creek running through it to be aesthetically valuable. He

¹ The actual percentage increase was 471.43% [$\$80,000 - \$14,000 = \$66,000 / \$14,000 = 471.43\%$].

asserted a gradual increase in value for both farmsteads would be fairer than a single year increase of 571%. [County Board Record, p. 9; Audio Recording Track 1 - 5:09-7:56].

9. Tara Berg, Deputy Fremont County Assessor, testified on behalf of the Assessor. Ms. Berg discussed all the property characteristics for each of the Finley properties even though only the land value of the two farmsteads was being contested. [County Board Record, pp. 12-13; Audio Recording Track 2 - 11:20-11:37].

10. Ms. Berg testified the value of Taxpayers' two farmsteads had remained the same since at least tax year 2000. She indicated the increase in 2009 was the result of an increase in the value of 2 acre farmsteads in Fremont County. Both farmsteads were incorporated into the River Land Economic Area [LEA] 430R for 2009, as the result of an effort by the Assessor, at the direction of the Department, to reduce the number of LEAs in Fremont County. The properties in LEA 430R have the common characteristic of a waterway, creek, river, or stream. [County Board Record, pp. 16-17; Audio Recording Track 2 - 00:00-00:33, 12:50-12:57].

11. Ms. Berg further testified regarding six sales of comparable property in 2008 and 2006 used by the Assessor to arrive at a per acre value for Taxpayers' farmsteads. [County Board Record, pp. 14-17; Audio Recording Track 2 - 00:00-01:56].

12. The first sale in 2008 transferred 7.37 acres of vacant land located on the East Fork for \$368,500. The second sale in 2008 encompassed 1.72 acres of vacant land on the Wind River east of Dubois for \$125,000. A third sale, also of vacant land, involved a 2.8 acre parcel located east of Dubois on the Wind River. This parcel sold for \$165,00 in 2007, although the deed was not recorded until 2008. [County Board Record, pp. 14-17; Audio Recording Track 2 - 00:00-01:56].

13. The first sale in 2006 transferred 2.9 acres of vacant land on Stoney Point Road for \$185,000. The second sale was also of vacant land, 2.43 acres, on Leseberg Ave., for \$103,275. The third 2006 sale was of 41.24 acres of vacant land on Hwy 26 for \$335,000. [County Board Record, pp. 14-17; Audio Recording Track 2 - 00:00-01:56].

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14. Ms. Berg asserted the Assessor did not use just one sale to adjust the value of Taxpayers' farmsteads, but rather used the referenced six sales and provided a summary:

Sale Price	Acres	Average Price/Acre
\$368,500	7.37	\$50,000
\$125,000	1.72	\$72,674
\$165,000	2.8	\$58,929
\$185,000	2.9	\$63,828
\$103,275	2.43	\$42,500
\$335,000	41.24	\$8,123

[County Board Record, pp. 14-17; Audio Recording Track 2 - 00:00-01:56].

15. Ms. Berg asserted the comparable sales, particularly the sale of the 7.37 acre lot, indicated to the Assessor the properties on the East Fork sold consistent with other river properties. [County Board Record, pp. 14-17; Audio Recording Track 2 - 01:56-02:59, 04:23-04:56].

16. The County Board Record also contains information concerning two other sales in 2008. The first sale included a 13.26 acre residential parcel west of Dubois on the Wind River. The property had three outbuildings. The first was a 160 square foot shed built in 1993. The second was a 465 square foot shed built in 1920. The third was an 816 square foot structure built in 1920 as a home but was no longer livable. The Assessor thus valued it as a shed. The property sold for \$725,000. The Assessor valued 5 acres at a primary price of \$40,000 per acre with the remaining 8.26 acres at a secondary price of \$7000 per acre. The total value of the 13.26 acres of land was therefore \$257,827. [County Board Record, p. 15].

17. The second 2008 sale involved 119.83 acres of agricultural land located on the Wind River. The sale included a 1232 square foot home built in 1978 as well as a 600 square foot outbuilding built in 1987. The property sold in 2008 for \$1 million. The agricultural value of the land, including a 2 acre farmstead, was \$90,144. [County Board Record, p. 15].

DISCUSSION OF ISSUES AND APPLICABLE LAW

18. 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 29, 2009. *Rules, Wyoming State Board of Equalization, Chapter 3 § 2*.

Applicable Law

19. 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.”

20. 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.”

21. 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).

22. 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)*.

23. 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).

24. Each county assessor annually determines the fair market value of real 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)*.

25. 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)*.

26. The Department has promulgated rules which establish appraisal techniques which may be used by an assessor. *Rules, Wyoming Department of Revenue, Chapter 9 § 5*². 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).

27. 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).

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

Section 5. Appraisal Methods.

² 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.

(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 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.

29. 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).

30. 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).

31. 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.

32. 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.

33. 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*, 2010 WY 119, ¶ 12, _____ P.3d _____, 2010 WL 3260072 (Wyo. 2010).

Discussion

34. Taxpayers contend the County Board erred in affirming the Assessor’s valuation of their two farmsteads. They argue the Assessor failed to take into consideration the characteristics of their properties, and considered the wrong comparable properties in determining the fair market value of their farmsteads.

35. The Department Rules define a farmstead:

(c) “Non-agricultural lands” shall include but not be limited to lands as described in the State of Wyoming market valuation of Residential, Commercial and Industrial Lands as published by the Department of Revenue, Ad Valorem Tax Division:

* * *

(iv) Farmsteads with lands occupied by buildings which constitute the homesite including one or more acres of land used in direct connection with the homesite;

Rules, Wyoming Department of Revenue, Chapter 10 § 3 (c)(iv).

36. As a threshold matter, we note the Department Rules governing *appraisal methods* recognize no such subclass. *Rules, Wyoming Department of Revenue, Chapter 9.* For example, the Cost Approach to value does not recognize separate principles applicable only to farmsteads. *Rules, Wyoming Department of Revenue, Chapter 9 § 5(a)(ii).*

37. The Department Rules, in Chapter 10, distinguishes between those lands which are to be taxed as agricultural lands, and those which are not. *Wyo. Stat. Ann. § 39-11-103 (b)(x); Rules, Wyoming Department of Revenue, Chapter 10.*

38. All agricultural lands are assessed on the basis of capability to produce. *Wyo. Const. art. 15, § 11(b); Wyo. Stat. Ann. § 39-13-103 (b)(x)(A).*

39. Nothing in Wyoming statutes indicates the Legislature intended a special tax treatment for farmsteads as well as for agricultural lands. *See Wyo. Stat. Ann. § 39-13-103(b)(x).* The Department Rules define agricultural lands by reference to use, *i.e.* those lands “being used and employed for the primary purpose of providing gross revenue from agricultural or horticultural use or any combination thereof unless part of a platted subdivision.” *Rules, Wyoming Department of Revenue, Chapter 10 § 3(a).* The Department Rules specifically exclude farmsteads from classification as agricultural lands. *Rules, Wyoming Department of Revenue, Chapter 10 § 3(c)(iv).*

40. The Department Rules contemplate two components of value, land and improvements, but have relatively little to say about the calculation of land values. For example, the Department Rules on the cost approach merely provide that, “[t]he cost approach is a method of estimating value by summing land value, where applicable, with the depreciated value of improvements.” *Rules, Wyoming Department of Revenue, Chapter 9, Section 5(a)(ii).* The

Rules state that the cost approach requires “[a]ccurate, current land values in the case of real property,” *Id.*, Section 5(a)(ii)(A), but do not say more.

41. There is an additional reason for valuing farmsteads the same as all residential improved property. An assessor’s treatment of farmsteads must be consistent with the residential and commercial classifications of property the State Board uses to discharge its equalization function.

42. The Wyoming Constitution and statutes expressly recognize only three classes of property for ad valorem tax purposes: the gross product of minerals and mine products; property used for industrial purposes; and all other property, real and personal. *Wyo. Const., art. 15, § 11 (a); Wyo. Stat. Ann. § 39-13-103 (b)(iii)*. The principal distinction between these three classes of property lies in the Legislature’s determination of the percent of fair market value which is to be the taxable value. *Wyo. Stat. Ann. § 39-13-103(b)(iii)*. Gross product of minerals and mine products are taxed at 100% of fair market value; property used for industrial purposes is taxed at 11.5% of fair market value; and all other real and personal property is taxed at 9.5% of fair market value. *Wyo. Stat. Ann. § 39-13-103(b)(iii)*.

43. The State Board annually determines whether each county is in compliance with the statutory fair market value standard. *Wyo. Stat. Ann. § 39-11-102.1(c)(ii); Rules, Wyoming State Board of Equalization, Chapter 5 § 2*. It does so principally by statistical analysis which measures the coefficient of dispersion (COD) and price-related differential (PRD) for residential and commercial properties. *Rules, Wyoming State Board of Equalization, Chapter 5 § 3(a)(iv),(x), § 5(a), § 6(a)(ii)*. The State Board gathers information for this purpose pursuant to a statutory duty to “[p]rescribe the form for the abstract of the assessment roll, examine and compare the abstracts of the counties and equalize the same, so that all taxable property in the state is assessed at its fair market value....” *Wyo. Stat. Ann. § 39-11-102.1(c)(ii)*.

44. The Board requires county assessors to prepare abstracts which report the assessed value and fair market value of four classes of property: (1) residential lands including farmsteads, (2) residential improvements including residences on farmsteads, (3) commercial lands, and (4) commercial improvements. *See Rules, Wyoming State Board of Equalization, Chapter 5 § 3(a)(iii)*. Annual abstracts demonstrating the use of these categories are available on the Board’s web site, <http://taxappeals.state.wy.us/>, under the heading, “Wyoming Abstract & Mill Levy Report.” The annual abstracts also report on the values of agricultural lands in three categories: irrigated lands, dry crop lands, and range lands in each county. There is no separate reporting for the value of farmsteads.

45. The Department's Rules also reflect the fact the constitutional class of "all other real property" has historically been divided into two categories, residential and commercial. *Rules, Wyoming Department of Revenue, Chapter 10 § 3 (c)*.

46. The size of Wyoming's counties places a practical constraint on the ability of the State Board to authorize the use of alternative valuation procedures for strata of property defined more narrowly than residential or commercial, improved or vacant. The State Board must be able to evaluate whether assessors have properly determined the value of real and personal property consistent with their obligations under state law. In order to do so, the State Board is required by statute to collect and analyze appraisal and sale data from counties. *Supra*, ¶ 43; *Wyo. Stat. Ann. § 39-11-102.1(c)(ii)*.

47. To perform statistically valid sales ratio studies for equalization purposes on a county by county basis, the State Board must have an adequate, consistently valued universe of sales for a specified property class in each county. We take notice of the fact that Wyoming's least populous county, Niobrara, had 2,407 inhabitants in 2000. *U. S. Census Bureau, Census 2000 Redistricting Data Summary File*. The number of sale transactions associated with a county population of that size tend to be so few as to strain the ability of the State Board to perform statistically satisfactory sales ratio studies. This is so even for residential improved, the class of property that normally has the greatest number of sale transactions. If the class of residential property were further divided into two subclasses of residential property and farmsteads, the ability of the State Board to conduct useful sales ratio studies could be compromised – particularly with regard to the smaller category, farmsteads.

48. Given this background, the only land sales on which an assessor can rely to reach a comparable value for a farmstead are the sales of vacant land. This was the process used by the Assessor in this matter. *Supra*, ¶¶ 11-17. The process was also consistent with the Department Rules for the valuation of land. *Rules, Wyoming Department of Revenue, Chapter 9 § 5(a)(i)*. The decision as to which comparable sales should be considered when valuing Taxpayers' farmsteads was a matter of professional judgement and discretion of the Assessor. We understand a 471% increase in value between 2008 and 2009 was a significant concern to Taxpayers who understandably held a different opinion as to what sales should have been considered in valuing their farmsteads. A simple difference of opinions is not, however, sufficient to overcome the presumption of correctness in favor of the Assessor's determined value. *Supra*, ¶¶ 30, 31.

49. It is also worth noting the value of Taxpayers' farmsteads had not changed since tax year 2000. *Supra*, ¶ 10. A good portion of the 471% increase between 2008 and 2009 may well have been attributable to increases in value which arguably should have been recognized

to some extent in tax years 2001, 2002, 2003, 2004, 2005, 2006, 2007, and 2008. It may well be Taxpayers' farmsteads were undervalued in those tax years.

50. The County Board Record contains sufficient substantial evidence to support the County Board decision to uphold the Assessor's 2009 value for Taxpayers' farmsteads. The County Board did not act unlawfully, arbitrarily and capriciously, or abuse its discretion in affirming the Assessor's value for 2009 tax purposes.

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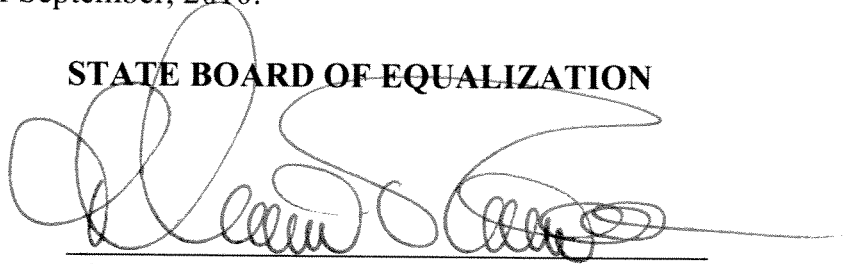
ORDER

IT IS THEREFORE HEREBY ORDERED the Decision of the Fremont County Board of Equalization dated August 1, 2009, affirming the Assessor's 2009 valuation of Taxpayers' 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 16th day of September, 2010.

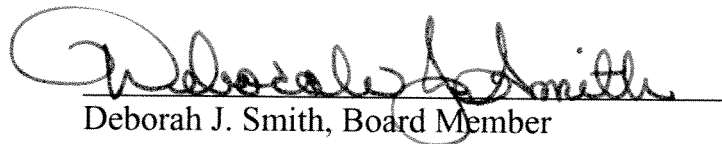
STATE BOARD OF EQUALIZATION



Thomas D. Roberts, Chairman

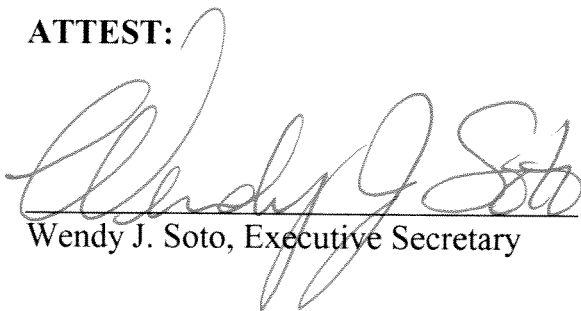


Steven D. Olmstead, Vice-Chairman



Deborah J. Smith, Board Member

ATTEST:



Wendy J. Soto, Executive Secretary


CERTIFICATE OF SERVICE

I hereby certify that on the 16th day of September, 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:

John & Ramona Finley
1144 East Fork Road
Dubois WY 82513

Eileen Oakley
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450 N 2nd Street
Lander WY 82520

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cc: State Board;
Commissioners/Treasurer/Clerk - Fremont County;
ABA State & Local Tax Reporter;