

BEFORE THE STATE BOARD OF EQUALIZATION

FOR THE STATE OF WYOMING

IN THE MATTER OF THE APPEAL OF)
BRAD A. LINDSEY REVOCABLE TRUST &)
ARDEN D. LINDSEY REVOCABLE TRUST) Docket No. **2009-120**
FROM A DECISION OF THE FREMONT)
COUNTY BOARD OF EQUALIZATION)
- 2009 PROPERTY VALUATION)

DECISION AND ORDER

APPEARANCES

Brad A. Lindsey appeared *pro se* on behalf of the Brad A. Lindsey Revocable Trust and the Arden D. Lindsey Revocable Trust (Taxpayers).

Jodi A. Darrough, Deputy County Attorney, Fremont County and Prosecuting Attorney's Office, appeared on behalf of Eileen Oakley, Fremont County Assessor (Assessor).

DIGEST

This appeal is from a decision of the Fremont County Board of Equalization (County Board) affirming the Assessor's valuation of Taxpayers' property for 2009 tax purposes. The Taxpayers' Notice of Appeal was filed with the State Board of Equalization (State Board) effective August 29, 2009. Taxpayers filed a one page brief on November 24, 2009, as allowed by the October 26, 2009, State Board Briefing Order. The Assessor filed a brief on December 28, 2009, as allowed by the Briefing Order. Taxpayers did not file a response brief. Neither party requested oral argument.

The State Board, comprised of Chairman Thomas D. Roberts, Vice Chairman Steven D. Olmstead, and Board Member Deborah J. Smith, considered the Taxpayers' Notice of Appeal, the Taxpayers' opening brief, the Brief of Respondent (Assessor), 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, which is whether the decision was arbitrary, capricious, unsupported by substantial evidence, and/or contrary to law. *Rules, Wyoming State Board of Equalization, Chapter 3 § 9.*

We affirm the decision of the County Board.

ISSUES

Taxpayers discussed the following issues:

1. The Assessor's use of comparable properties west of Taxpayers' property were higher value than properties to the east of Taxpayers' property, which were lower value and were not used as comparable properties.
2. The Assessor's use of comparable properties that were on or near the Wind River, which have a higher recreational appeal and corresponding higher fair market value.
3. The Assessor's use of one anomalous sale and the opinion of a realtor as supporting her valuation were not proper for increasing Taxpayers' property value.

[Taxpayers' Opening Brief].

The Assessor identified the following issue:

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

[Respondent's Opening Brief].

Taxpayers, in order to prevail, must establish the County Board decision was not supported by substantial evidence, and/or the County Board acted unlawfully, arbitrarily, and capriciously in affirming the Assessor's value of Taxpayers' property for 2009 tax purposes.

PROCEEDINGS BEFORE THE COUNTY BOARD

The County Board conducted a hearing on July 14, 2009, at which Brad Lindsey and Tara Berg, Deputy County Assessor, each testified and presented exhibits. The County Board entered its Decision and Order on August 1, 2009, affirming the Assessor's 2009 fair market value for Taxpayers' property. The decision was mailed to Taxpayers and the Assessor on August 3, 2009. [County Board Record, pp. 04, 72-76].

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))*.

By Rule, the State Board's standards for review of a county board's decision are nearly identical to the Wyoming Administrative Procedure Act standards which a district court must apply to hold unlawful and set aside agency action, findings of fact, and conclusions of law. *Wyo. Stat. Ann. § 16-3-114(c)(ii)*. However, unlike a district court, the State Board will not rule on claims that a county board has acted "[c]ontrary to constitutional right, power,

privilege or immunity.” *Wyo. Stat. Ann. § 16-3-114(c)(ii)(B)*. The State Board’s review is limited to a determination of whether the county board action is:

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

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

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

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

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

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

“When an agency’s determinations contain elements of law and fact, we do not treat them with the deference we reserve for findings of basic fact. When reviewing an ‘ultimate fact,’ we separate the factual and legal aspects of the

finding to determine whether the correct rule of law has been properly applied to the facts. We do not defer to the agency's ultimate factual finding if there is an error in either stating or applying the law." *Basin Elec. Power Co-op., Inc. v. Dep't of Revenue, State of Wyo.*, 970 P.2d 841, 850-51 (Wyo. 1998)(citations omitted).

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

We must also apply this "arbitrary and capricious" standard:

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

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

FACTS PRESENTED TO THE COUNTY BOARD

1. Taxpayers own a parcel of land on the East Fork of the Wind River near Dubois, Fremont County, Wyoming. The property is described as: T7N R6W S34 - tract of land in the N/2; T41N R105 W S4 - Lots 5 & 6 QCD-635-170 QCD-713-661; or as 664 East Fork Road in Dubois. The property consists of 104.92 acres with residential and commercial improvements, agricultural range land and irrigated crop land. [County Board Record, pp. 10, 14, 20-22; Hearing Recording].

2. The initial Notice of Assessment was mailed to Taxpayers on April 15, 2009, indicating a fair market value for the property of \$146,132. [County Board Record, pp. 06, 09; Hearing Recording].

3. Taxpayers filed Fremont County's "Statement to Contest 2009 Property Tax Assessment" form with the County Assessor on May 8, 2009, stating, in summary, the assessment of their property was incorrect for the following reasons:

- (1) Increase in the property value was based upon on one sale in the valley which "was an anomaly." This property is different because it "has little or no agricultural use or potential. It is solely for a residence."
- (2) Increase in the property value was based on "a conversation with local realtor."
- (3) Increase in the property value was incorrect because "the property is agricultural with no habitable buildings."

[County Board Record, pp. 01-03].

4. After Mr. Lindsey filed the "Statement to Contest 2009 Property Tax Assessment," but before the County Board hearing on the matter, the Assessor made a site visit to Taxpayers' property on June 9, 2009. An amended Assessment Schedule, dated June 10, 2009, was mailed to Taxpayers, indicating reduced improvement values, addition of commercial improvements, and a revised fair market value of \$117,564. [County Board Record, pp. 10, 14, 18, 20; Hearing Recording].

5. Taxpayers' contested hearing was conducted before the County Board on July 14, 2009. [County Board Record, pp. 04, 72; Hearing Recording].

6. Mr. Lindsey presented a written statement, a 2008 assessment notice, an initial 2009 assessment notice, and an amended 2009 assessment notice, a letter, and a plat map, as well as, testimony regarding the location of his property, and location of the comparable properties used in Assessor's analysis. He questioned the classification of the buildings in his assessment notice as commercial. He also contested the two-acre farmstead valuation, and the comparable properties utilized by the Assessor in her analysis. Additionally, he questioned the change of some agricultural land from range land to irrigated land. [County Board Record, pp. 06-12; Hearing Recording].

7. Mr. Lindsey conceded the change in agricultural land classification from range land to irrigated crop land was proper, although he complained the change was made only from a telephone conversation with a deputy assessor, and was not a result of a site visit from the Assessor's office. Mr. Lindsey conceded the classification of the improvements on the property were agricultural structures, and thus commercial improvements. [County Board Record, p. 06; Hearing Recording].

8. Mr. Lindsey asserted the sale of a neighboring property overly skewed the value of his property. He believed the sale price of the property was unrealistically high for the neighborhood. He claimed the property, although close in proximity to his property, had different characteristics and was not intended for agricultural purposes. He further asserted the sale property was only offered to one person who was willing to pay more than market value. [County Board Record, pp. 03, 06-07; Hearing Recording].

9. Taxpayers presented a letter addressed "To Whom It May Concern," which stated: "In October of 2007 I acquired 83.3 acres of property up the East Fork valley from Joseph K. Corson for the sale value of \$177,450." The letter was dated "7-14-09" and was signed "Sincerely, Charlton Locke Hamilton." [County Board Record, p. 11; Hearing Recording].

10. Mr. Lindsey admitted the neighboring property sale described in the letter was between family members, and not an open market sale. [County Board Hearing Recording].

11. Mr. Lindsey asserted the Assessor did not utilize proper comparable market sale properties when assessing their property. He asserted the comparable sales utilized by the Assessor encompassed an area only along the Wind River, and not on the tributaries of the Wind River, where his property was located. Mr. Lindsey claimed the Assessor's use of the properties along the Wind River resulted in higher market value sales due to the recreational nature of those properties. Mr. Lindsey additionally believed the travel distance on the dirt and gravel road to reach Taxpayers' property should reduce the value of the property. [County Board Record, pp. 06-07; Hearing Recording].

12. Mr. Lindsey also contested the valuation of the two acres of residential land on Taxpayers' property. He believed the increased in valuation was incorrect in "a time of decreasing land values." He questioned whether all farmstead acreage on agriculture property in the county and located on a waterway was valued like his property. [County Board Record, pp. 06-07; Hearing Recording].

13. Taxpayers took issue with the Assessor classifying their residential site as river front property. Mr. Lindsey believed the location of the farmstead was not on the river, but rather back from the river in a suitable location for the agricultural purposes of the property. [County Board Record, pp. 06-07; Hearing Recording].

14. Mr. Lindsey argued the increase in value of the two-acre farmstead from \$14,000 in 2008 to \$80,000 in 2009 was unwarranted. He argued the increase in the value of the neighboring property, as well as the support for the price of that property from a local real

estate agent was unreliable. Mr. Lindsey asserted the real estate agent only wanted to see the price of land increase in order to see profits increase. [County Board Record, pp. 06-07; Hearing Recording].

15. Mr. Lindsey objected to the “571% increase” in value for the two-acre residential land from 2008 to 2009.¹ Mr. Lindsey believed “the value of my property is somewhere between the Corson \$2,130/acre and the Spence \$50,000/acre.” [County Board Record, pp. 01-03, 06-07; Hearing Recording].

16. Besides his sworn testimony, Mr. Lindsey provided no evidence other than Exhibits 1-4. *Supra*, ¶ 6. [County Board Record, pp. 06-12, 73; Hearing Recording].

17. Tara Berg, Deputy County Assessor, presented evidence on behalf of the Fremont County Assessor, Eileen Oakley. Ms. Berg is a certified Wyoming tax appraiser. [County Board Record, p. 72; Hearing Recording].

18. Ms. Berg confirmed the Taxpayers’ property consisted of 104.92 acres, and was valued by the Assessor’s office in 2009 at \$99,333 for the land, and \$18,232 for improvements, for a total of \$117,565. Taxpayers’ property address is on the East Fork Road. The property is located along the East Fork of the Wind River near Dubois. [County Board Record, pp. 14, 20-27; Hearing Recording].

19. Ms. Berg verified the Assessor utilized the Wyoming Computer Assisted Mass Appraisal (CAMA) system, including the State’s mandated use of the Marshall & Swift cost system. [County Board Record, p. 14; Hearing Recording].

20. An on-site inspection of Taxpayers’ property was made by the Assessor’s field appraisers on June 9, 2009. The inspection included a measurement of all structures, as well as, an examination of their quality and condition. The Assessor used each structure’s age, size, and construction quality and condition when calculating the fair market value of Taxpayers’ property. [County Board Record, pp. 14-15, 18, 28; Hearing Recording].

21. The Assessor determined there was a cabin (house) and four outbuildings on Taxpayers’ property. The cabin was built in 1935, with 1008 square feet of unfinished living area. It was described as “guttled and in the process of being redone.” Ms. Berg stated the

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

structure was rated as low quality and in poor condition. [County Board Record, pp. 14-15, 22; Hearing Recording].

22. The Assessor appraised the four remaining outbuildings as: (1) 1200 square-foot detached garage of average quality and condition; (2) 168 square-foot shed of fair quality and poor condition; (3) 345 square-foot shed with fair quality and poor condition; and, (4) 350 square-foot shed with fair quality and average condition. [County Board Record, pp. 15, 22; Hearing Recording].

23. Ms. Berg confirmed the June 6, 2009, site visit on Taxpayers' property resulted in a reduced value for the house and outbuildings, largely due to the revision in quality and condition of the structures. She said the change was reflected in an amended assessment notice dated June 10, 2009, reducing the value of the buildings from \$46,800 to \$18,232. [County Board Record, pp. 14-15, 18, 20; Hearing Recording].

24. Using the information obtained on Taxpayers' house, the Assessor was able to determine, from the CAMA system, the replacement cost of building the same structure new, using today's labor and materials cost was \$8,562. Taxpayers' additional outbuildings were valued similarly, giving a value of \$8,588 for the detached garage; \$114 for a farm utility shed; \$234 for a farm utility shed; and, \$734 for a loafing shed. [County Board Record, p. 22; Hearing Recording].

25. Ms. Berg testified the Assessor in the past year had decreased "the number of LEA's and Neighborhoods." Taxpayers' property "was converted to LEA 430R for 2009." [County Board Record, p. 18; Hearing Recording].

26. Ms. Berg testified the LEA was considered riverfront property, regardless of where the actual buildings were located on the property. She said all properties in LEA 430R were along a waterway on or near the Wind River. [County Board Hearing Recording].

27. The Assessor, relying upon the Department's Rules in Chapter 10, Section 3(c)(iv), defining "non-agricultural lands" valued the farmstead, which was land occupied by buildings and which constituted the homesite including one or more acres, as residential, and not agricultural land. [County Board Record, pp. 17, 67, 71; Hearing Recording].

28. Ms. Berg stated the Assessor valued improved property in Fremont County with an "Agricultural Classification" to include at least two acres of farmstead. The farmsteads were treated like residential lots at full market value. The remainder of Taxpayers' property was classified as agricultural land. [County Board Record, pp. 17-19; Hearing Recording].

29. Ms. Berg said Taxpayers' two-acre farmstead, although unoccupied, still qualified as a farmstead due to the improvements on the land. [County Board Record, pp. 17-19; Hearing Recording].

30. Ms. Berg stated the Assessor arrived at a value for Taxpayers' two-acre farmstead through use of comparable sales which occurred in the same LEA as Taxpayers' property. [County Board Record, pp. 17-18; Hearing Recording].

31. The Assessor compared seven sales which occurred in 2008; four sales which occurred in 2007; and, eight sales which occurred in 2006, all within the same LEA as Taxpayers' property. Ms. Berg stated "these properties have the common characteristic of a waterway, creek, river or stream, therefore were grouped together to make up LEA 430R." The vacant land sales for these compared properties resulted in a \$40,000 per acre value. [County Board Record, pp. 18-19; Hearing Recording].

32. Ms. Berg said the two acres of farmstead were uniformly applied throughout the LEA in which Taxpayers' property is located. Each agricultural property with buildings had a two acre farmstead valued at \$40,000 per acre. [County Board Record, pp. 18-19, Hearing Recording].

33. Ms. Berg stated the neighboring property which concerned Mr. Lindsey was not the only property in his LEA which affected the value of Taxpayers' two-acre farmstead. She stated "there was not just one used to adjust the subject property, rather a culmination of sales." [County Board Record, p. 19; Hearing Recording].

34. Ms. Berg asserted the Assessor complied with state law, and the Department and the State Board requirements in determining the fair market value of Taxpayers' property. [County Board Record, p. 30].

35. The County Board issued its decision on August 1, 2009. The County Board "generally" supported the Assessor with the neighborhood she utilized in her analysis. The County Board further found "the presumption the Assessor's valuations of the property are valid, accurate and correct and should be upheld in this case." [County Board Record, pp. 72-76].

36. Taxpayers appealed the County Board decision to the State Board effective August 29, 2009. [*Notice of Appeal*].

DISCUSSION OF ISSUES AND APPLICABLE LAW

37. 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*.

Applicable Law

38. 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.”

39. 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.”

40. 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).

41. 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)*.

42. 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).

43. 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)*.

44. 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)*.

45. The Department has promulgated rules which establish appraisal techniques which may be used by an assessor. *Rules, Wyoming Department of Revenue, Chapter 9 § 6*.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 § 6 (a), (b), (c)*. The Department Rules also include a number of definitions pertinent to this matter, including “Appraisal Foundation” and “Replacement Cost.” *Rules, Wyoming Department of Revenue, Chapter 9 § 4 (g), § 6 (b)(v)(F)*. Administrative rules have the force and effect of law. *Wyo. Dep’t of Revenue v Union Pacific Railroad Co.*, 2003 WY 54, ¶ 18, 67 P.3d 1176, 1184 (Wyo. 2003); *Painter v. Abels*, 998 P.2d 931, 939 (Wyo. 2000).

46. The Department’s Rules provide for use of a CAMA system. *Rules, Wyoming Department of Revenue, Chapter 9 § 6 (d)*. CAMA “automates the comparable sales and replacement cost methods.” *Britt v. Fremont County Assessor*, 2006 WY 10, ¶ 39, 126 P.3d 117, 128 (Wyo. 2006).

47. Land Economic Area (LEA) is defined as:

² The Department adopted new rules effective December 7, 2009, revising Chapter 9. *Rules, Department of Revenue*. The references in this decision are to the rules in effect as of January 1, 2009, the assessment date, except as noted in footnotes 3 and 4.

A geographic area that may encompass a group of neighborhoods, defined on the basis that the lands within its boundaries are more or less equally subject to a set of one or more economic forces that largely determine the value of the lands within this area.

*Wyoming Department of Revenue, Chapter 9 § 4 (a.)(xviii).*³

48. Neighborhood is defined as:

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

*Glossary for Property Appraisal and Assessment, International Association of Assessing Officers (IAAO), 1997.*⁴

49. By rule, the Department has defined its own additional and independent responsibility to monitor the assessors' use of CAMA systems:

- (i) Annually, the Ad Valorem Tax Division shall monitor each Wyoming county to discuss and ensure utilization of the Department approved CAMA systems and compliance with all Department directives and orders with regard to appraisal method and valuation methodologies. The results shall be compiled by identifying current issues of concern and presented to the Department of Revenue Director no later than January 31st.

³ The Department adopted a definition of "Land Economic Area (LEA)" effective December 7, 2009. The amendments to Chapter 9, however, did not affect the substance of the prior Rules applicable to this appeal. This reference is to the Department amended Rules. *See, Rules, Wyoming Department of Revenue, Chapter 9 § 4 (a.)(xviii).*

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

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

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

Section 6. Appraisal Methods.

(a.) The appraisal techniques which may be used by the County Assessor or the Ad Valorem Tax Division under written agreement with a county include the approaches described in this section. Each approach used shall be an appropriate method for the type of property being valued; that is, the property shall fit the assumptions inherent in the appraisal method in order to calculate or estimate the fair value of the property. Each approach used shall also consider the nature of the property or industry, and the regulatory and economic environment within which the property operates.

Rules, Wyoming Department of Revenue, Chapter 9 § 6.

Section 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.

51. By rule, the Department has defined “non-agricultural land” to include “farmstead.” Farmsteads are 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).*

52. Department rule provides “in determining the fair market value for tax purposes of non-agricultural lands as defined in these Rules, the appraiser shall use the methods outlined

in Chapter 9, section 6 of these Rules. *Rules, Wyoming Department of Revenue, Chapter 10 § 4.*

53. The determination of fair market value inevitably involves a degree of discretion:

Early on, Justice Blume recognized a truth inherent in the area of property valuation: “There is no such thing as absolute value. A stone cannot be other than a stone, but one man may give a different valuation to a piece of land than another.” *Bunten v. Rock Springs Grazing Ass’n*, 29 Wyo. 461, 475, 215 P. 244, 248 (1923). Accordingly, this court has consistently interpreted Wyo. Const. art. 15, § 11 to require “only a rational method [of appraisal], equally applied to all property which results in essential fairness.”

Basin Electric Power Coop. v. Dept. of Revenue, 970 P.2d 841, 857 (Wyo. 1998) quoting *Holly Sugar Corp. v. State Board of Equalization*, 839 P.2d 959, 964 (Wyo. 1992). The Wyoming Supreme Court reiterated the “rational method” standard. *Britt v. Fremont County Assessor*, 2006 WY 10, ¶ 18, 126 P.3d 117, 123 (Wyo. 2006).

54. 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).

55. 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.

56. 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*, 896 P.2d at 1351.

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

Discussion

58. Taxpayers contend the County Board erred in affirming the Assessor's valuation of their farmstead. Taxpayers argue the Assessor failed to take into consideration the characteristics of their property and considered the wrong comparable properties in determining the fair market value of their farmstead.

59. The Department Rules on "non-agricultural land" define a farmstead as: "Farmsteads with lands occupied by buildings which constitute the homesite including one or more acres of land used in direct connection with the homesite." Taxpayers' property had land with buildings. *Supra*, ¶¶ 29, 51.

60. There is an additional reason for including farmsteads in the class of 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.

61. As a threshold matter, we note the Department Rules governing *appraisal methods* recognize no such subclass of farmsteads. *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)*.

62. 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*.

63. 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)*.

64. Nothing in Wyoming statutes indicates the Legislature intended a special tax treatment for farm and ranch residences 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)*.

65. 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 § 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.

66. The Department Rules provide that “[t]he comparable sales approach is an appropriate method of valuation when there is an adequate number of reliable arms-length sales and properties subject to such sales are similar to the property being valued.” *Rules, Wyoming Department of Revenue, Chapter 9 § 6(a)*.

67. The Wyoming Constitution and statutes expressly recognize three classes of property for ad valorem 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 taxable. *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)*.

68. 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) and (xiii), 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)*.

69. 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.

70. 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)*.

71. 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*, ¶¶ 68.

72. 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 State Board's ability 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 State Board's ability to conduct useful sales ratio studies could be compromised – particularly with regard to the smaller category, farmsteads.

73. 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*, ¶¶ 30-33. The decision as to which comparable sales should be considered when valuing Taxpayers' farmstead 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 farmstead. A simple difference of opinions is not, however, sufficient to overcome the presumption of correctness in favor of the Assessor's determined value. *Supra*, ¶¶ 54-55.

74. Taxpayers did not present any evidence which called into question the Assessor's use of the CAMA system. Taxpayers did not provide any evidence, such as a market analysis or an appraisal of their property, which would indicate a value different than the value determined by the Assessor. *Supra*, ¶ 16. The Assessor's Office, after Taxpayers filed their protest, made an on-site visit, which resulted in a reduction of the value of Taxpayers' building, thus reducing the property's fair market value. *Supra*, ¶ 23.

75. The valuation of the Assessor is presumed valid, accurate, and correct. In this case, Taxpayer failed to present sufficient substantial evidence to overcome the presumption of validity in favor of the Assessor's appraisal determination for his farmstead, or the appraisal methodology. Furthermore, Taxpayers failed to present any evidence, other than opinion testimony regarding the LEA in which Taxpayers' property was assessed by the Assessor, and how it was different from the determination made by the Assessor. The decision of the County Board was supported by substantial evidence, and therefore must be affirmed. The County Board decision was not unlawful, arbitrary, or capricious.

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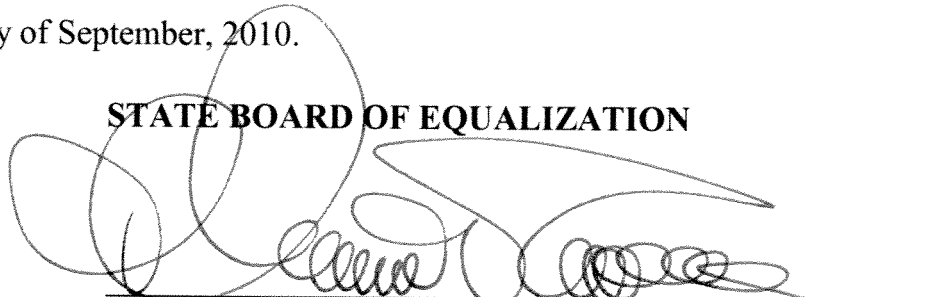
ORDER

IT IS THEREFORE HEREBY ORDERED the Decision and Order of the Fremont County Board of Equalization affirming the Assessor's 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

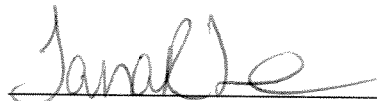
CERTIFICATE OF SERVICE

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:

Brad & Arden Lindsey
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Dubois WY 82513

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Fremont County Assessor
450 N 2nd Street
Lander WY 82520

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