

BEFORE THE STATE BOARD OF EQUALIZATION

FOR THE STATE OF WYOMING

IN THE MATTER OF THE APPEAL)
OF MICHAEL K. MADDEN FROM A)
DECISION OF THE JOHNSON COUNTY) Docket No. **2009-123**
BOARD OF EQUALIZATION - 2009)
PROPERTY VALUATION)

DECISION AND ORDER

APPEARANCES

Michael K. Madden (Taxpayer) appeared *pro se*.

Christopher M. Wages, Johnson County Attorney, and Barry V. Crago, Johnson County Civil Deputy Attorney, appeared on behalf Dorothy Elsom, Johnson County Assessor (Assessor).

DIGEST

This is an appeal from a decision of the Johnson County Board of Equalization (County Board) affirming the Assessor's valuation of Taxpayer's property for 2009 tax purposes. Taxpayer's Written Notice of Appeal was filed with the State Board of Equalization (State Board) effective September 11, 2009. Taxpayer filed an Opening Brief on December 19, 2009, as allowed by the State Board Briefing Order. The Assessor filed a response brief on January 22, 2010. Taxpayer filed a Reply Brief on February 8, 2010. Taxpayer requested oral argument, which was set for March 18, 2010. Taxpayer subsequently withdrew his request, and the scheduled oral argument was vacated by State Board Order dated March 9, 2010.

The State Board, comprised of Chairman Thomas D. Roberts, Vice Chairman Steven D. Olmstead, and Board Member Deborah J. Smith, considered Taxpayer's Written Notice of Appeal, Taxpayer's Opening Brief, the Johnson County Assessor's Response Brief, Taxpayer's Reply Brief, the County Board Record, the recording and transcript of the County Board hearing, and the County Board Order Upon Hearing.

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

We remand this matter to the County Board.

ISSUES

Taxpayer presents three arguments or issues:

1. The value of Taxpayer's property was established in an arbitrary and capricious manner.
2. There was a divergence from an observation of procedures required by Wyoming law.
3. There was an absence of evidence as to the foundation supporting the 2009 assessed value of Taxpayer's property.

[*Taxpayer's Opening Brief, p. 2*].

The Assessor identifies the following issues:

1. Whether the County Board's decision was arbitrary, capricious, an abuse discretion or otherwise not in accordance with the law.
2. Whether the County Board's decision was in excess of statutory jurisdiction, authority or limitation or lacking statutory right.
3. Whether the County Board failed to observe procedure required by law.
4. Whether the County Board's decision was supported by substantial evidence.

[*Assessor's Response Brief, p. iv*].

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

PROCEEDINGS BEFORE THE COUNTY BOARD

The County Board conducted an initial hearing on July 23, 2009, at which Taxpayer and the Assessor as well as the Deputy County Assessor each testified and presented exhibits. At the conclusion of the presentation of evidence and closing arguments at this initial hearing, Taxpayer and the Assessor agreed to the County Board request that both parties provide additional evidence. The County Board hearing on Taxpayer's appeal was thus continued to the morning of July 24, 2009, at which time it was combined with another taxpayer's appeal.¹ The County Board entered its written Order Upon Hearing on August 18, 2009, affirming the Assessor's 2009 fair market value for Taxpayer's property. The decision was mailed to the Taxpayer and the Assessor on August 19, 2009. [County Board Record, pp. 88-92].

JURISDICTION

The State Board is required to "hear appeals from county boards of equalization." *Wyo. Stat. Ann. § 39-11-102.1(c)*. Taxpayer filed a timely appeal of the County Board decision with the State Board effective September 11, 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*,

¹ The taxpayer whose hearing was combined with the continued hearing of Mr. Madden did not appeal the decision of the County Board with regard to their property.

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. Michael K. Madden and Cheryl B. Madden own property at 63 Langdon Road, more particularly described as Lot 41 and Lot 42 of Phase 111, in the Mountain Ridge Estates subdivision located in Buffalo, Johnson County, Wyoming. Lot 41 has 2.07 acres with no improvements. Lot 42 has 2.03 acres with residential improvements. [County Board Record, pp. 22-23].

2. Notices of Assessment for the 2009 tax year were sent to Taxpayer on May 29, 2009, indicating a fair market value of \$40,485 for Lot 41, and \$314,643 on Lot 42 for the land and improvements. [County Board Record, pp. 22-23].

3. Taxpayer timely filed a “Statement of Protest” with the Johnson County Assessor regarding the assessment of Lot 42 and the improvements. A hearing was conducted before the County Board on July 23 and 24, 2009. The County Board affirmed the fair market values determined by the Assessor. [County Board Record, pp. 01, 19-21, 88-92, 94-95; Transcript, pp.1, 56].

4. Mr. Madden provided sworn testimony at the County Board hearing. He set out three points in his oral presentation: (1) property should be assessed at “fair market value”; (2) property should be assessed annually at fair market value, except as otherwise provided by law for specific property, as example, agricultural property; and, (3) “procedures in place to help assure individual properties are not over assessed.” [County Board Record, Transcript, pp. 4-6].

5. Mr. Madden presented exhibits and explained what he believed the exhibits demonstrated. Exhibit 1 was a document he asserted showed the average appraised values of residential properties by each Wyoming county from 2000 to 2009. Mr. Madden stated the average assessed value of residential property in Johnson County, according to the information in Exhibit 1, decreased by 13.27% from 2008 to 2009. [County Board Record, pp. 05-06; Transcript, pp. 6-7].

6. Mr. Madden presented Exhibit 2 entitled “Year-To-Year Comparison Report,” which he stated was information from the “Multi-List Service” showing the change in value of property in Johnson County. Mr. Madden claimed the document indicated Johnson County average property sales values dropped by 5% from 2007 to 2008. [County Board Record, p. 07; Transcript, pp. 8-9].

7. Mr. Madden presented evidence regarding his property in Exhibit 3. He stated the document represented changes in the Assessor’s value of his property. He asserted the property’s assessed value increased 46.3% between 2007 and 2008. He further asserted the assessed value increased 53.9% between 2007 and 2009. [County Board Record, pp. 08-09; Transcript, pp. 10-12].

8. Mr. Madden contacted the Assessor’s office about the increase in his assessed property value in 2008. This contact was followed by a site visit by one of the office

appraisers. He stated the result of the site visit was another \$10,000 increase in the property's assessed value. [County Board Record, pp. 08-09; Transcript, pp. 10-11].

9. Exhibit 4 and Exhibit 5 were also presented by Mr. Madden. Exhibit 4 was a table with data pertaining to his property and four comparable properties. Exhibit 5 was a collection of photographs of his property and the four comparable properties. He argued the exhibits showed the comparison of his property to four comparable properties for the purpose of determining a sales ratio. [County Board Record, pp. 10-12; Transcript, pp. 12-13].

10. Mr. Madden stated the four comparable properties provided by the Assessor, included in Exhibits 4 and 5, were all sold in 2008. He asserted the comparable properties 1, 2, and 4 were all over-assessed, while comparable property 3 was under-assessed. Based on his ratio between sales price and the Assessor's fair market values, Mr. Madden believed the four properties were, on average, over-assessed by 4%. [County Board Record, pp. 10-12; Transcript, pp. 13-14].

11. Mr. Madden explained the additional data he generated for Exhibit 4 set forth a comparison between the four properties and his property on an assessed value per square foot, as well as on the sales price of land and buildings per square foot. [County Board Record, pp. 10-12; Transcript, pp. 15-17].

12. Mr. Madden also expressed concerned about the increase in the assessed value of his property for the 2008 tax year. [County Board Record, pp. 10-12; Transcript, p. 15].

13. Mr. Madden asserted the data generated for Exhibit 4 shows the "average" sales price of \$90 per square foot, as applied to his 1,700 square foot residence, would provide a more appropriate assessment value of \$175,000. [County Board Record, pp. 10-12; Transcript, pp. 16-17].

14. Mr. Madden argued the importance of Wyoming Statute § 39-13-109, as set out in Exhibit 6, and Wyoming Statute § 39-11-102(c)(xxv), as set out in Exhibit 7. He stated the two statutes were necessary for the County Board to keep in mind when making a decision in his appeal. [County Board Record, pp. 13-15; Transcript, pp. 18-19].

15. Mr. Madden requested the County Board reduce his assessment by at least 4%, which was the amount he derived from his sales ratio calculations. [County Board Record, pp. 13-15; Transcript, pp. 18-19].

16. Dorothy Elsom, Johnson County Assessor, and Mary Klaahsen², Deputy Johnson County Assessor, along with Jack Rehm³ from the Wyoming Department of Revenue (Department) testified on behalf of the Assessor. [County Board Record, p. 94; Transcript, pp. 22-46, 93-101].

17. Ms. Klaahsen described Exhibit A as a “schedule of notice value for 2009 for Michael Madden on his vacant lot, lot 41.” [County Board Record, p. 22; Transcript, pp. 22-23].

18. Ms. Klaahsen described Exhibit B as the “notice value for 2009 on Michael Madden’s lot and that’s with the residence.” Ms. Klaahsen stated Mr. Madden’s estimated tax increased “approximately 5%” from the previous year, which she estimated was about \$150.00. [County Board Record, p. 23; Transcript, p. 23].

19. Ms. Klaahsen identified Exhibit C as the “property profile” for Mr. Madden’s lot with the residence. It was a “breakdown on the buildings and the land, the stuff we entered into the computer. And also it has pictures of the house.” [County Board Record, p. 24; Transcript, pp. 24-31].

20. Ms. Klaahsen stated there was a 35% adjustment made to Taxpayer’s neighborhood based upon an overall Johnson County sales ratio analysis. The 35% neighborhood adjustment was entered into the computer mass appraisal system (CAMA). [County Board Record, p. 25; Transcript, p. 25].

21. Ms. Klaahsen testified the previous year’s neighborhood adjustment extension was 30%, therefore there was an increase for Taxpayer’s neighborhood of 5%. She stated “we did our analysis we found that, we felt that we had 5% overall in these areas as far as the age and the size and we had to do an analysis on quality and condition in order [to] find out what the percentage of unsold needed to be raised to.” She testified the increase was necessary to keep an acceptable ratio between the increase or decrease in value of sold and unsold

² Mary Klaahsen was identified in the Minutes of the County Board hearing. [County Board Record, pp.94-96]. When Mary Klaahsen was called as a witness and sworn, she did not provide a spelling of her name, thus her name was misspelled throughout the hearing transcript.

³ Jack Rehm, appeared by telephone on July 24, 2009, and was identified in the Minutes of the County Board hearing. [County Board Record, pp.95-96]. When Jack Rehm was sworn to testify, he did not provide a spelling of his name, thus his name was misspelled throughout the hearing transcript.

residential properties, in order to comply with requirements of the State Board. [County Board Record, p. 25; Transcript, pp. 26-28].

22. Ms. Klaahsen testified the increase of 5% in Taxpayer's neighborhood was done in order to comply with the State Board requirements of having a range of 95% to 105% of assessed values to the actual sales price within the county. [County Board Record, p. 25; Transcript, pp. 26-27].

23. Ms. Klaahsen identified Exhibit D as the "property profile" for Mr. Madden's vacant lot 41. [County Board Record, p. 32; Transcript, p. 29].

24. Ms. Klaahsen described Exhibit E as the "sales comparables that we pulled and in this system we have started using an auto comp." The exhibit is a list of the Taxpayer's residential property and four comparable properties. [County Board Record, pp. 33-37; Transcript, p. 30].

25. According to Ms. Klaahsen, the "auto comp" would determine comparable properties by the information provided by the Assessor's office as to "which neighborhoods were similar, as far as houses that are similarity in age and size and quality." [County Board Record, pp. 33-37; Transcript, pp. 30-31].

26. Ms. Klaahsen stated Exhibit F, Exhibit G, Exhibit H and Exhibit I, were the "property profiles" for each of the four comparable properties used in the Assessor's analysis. [County Board Record, pp. 38-66; Transcript, pp. 31-32].

27. Ms. Klaahsen confirmed the Johnson County Assessor's office determined "fair market value" of property through the Computer Assisted Mass Appraisal (CAMA) system.⁴ [County Board Record, p. 94; Transcript, p. 32].

28. Ms. Klaahsen asserted the data utilized by the Assessor in preparation of the 2009 assessment notices was based upon information and sales data obtained in 2008, not in 2009. [County Board Record, p. 33; Transcript, p. 33].

29. Ms. Klaahsen stated the Assessor, in preparing the 2009 assessment notices, did a sales ratio analysis of sold and unsold properties, within a given age range of houses of similar size and quality. Ms. Klaahsen explained the process of mass appraisal for both the sold and

⁴ The "CAMA system" was referenced in the hearing transcript as the "canvas system." This was probably due to the quality of the hearing recording and was mis-transcribed.

unsold properties. She asserted the neighborhood adjustment was the result of an analysis of both sold and unsold properties. [County Board Record, Transcript, pp. 34-35, 40-41].

30. Ms. Klaahsen testified the “auto comp” from the computer (CAMA) provided the four comparable properties provided to Taxpayer. She stated the neighborhood adjustment came from a larger selection of comparable properties than provided by the “auto comp” CAMA function. [County Board Record, Transcript, pp. 40-41].

31. Ms. Elsom stated she was decreasing the number of neighborhoods in the county in order to comply with the Department requirement of having more properties in a neighborhood and thus have more sales per neighborhood for her analysis. She stated she had made adjustments to neighborhoods in prior years. [County Board Record, Transcript, pp. 47-48].

32. Ms. Elsom testified she used the “Statement of Consideration” attached to the deeds when property sells, in order to obtain property values. She does not use realtor listings. [County Board Record, Transcript, pp. 43-44].

33. Ms. Elsom testified the number of sales in Johnson County had decreased in 2008, but the sales in dollar value were as high in the past years - “just less sales.” [County Board Record, Transcript, pp. 43-44].

34. The County Board, at the close of the hearing on July 23, 2009, stated it needed further explanation and “more detail” from the Assessor on her “neighborhood adjustment computations.” The County Board requested Taxpayer and the Assessor present additional evidence at a continuation of Taxpayer’s hearing on July 24, 2009. [County Board Record, pp. 94-96; Transcript, pp. 53-56].

35. Ms. Klaahsen, at the beginning of the second day of hearing on July 24, 2009, presented Exhibit J, explaining it was a printout, a “snapshot”, from the CAMA system software called RealWare. She said Exhibit J was the replacement cost new less depreciation (RCNLD) for Mr. Madden’s property. Ms. Klaahsen explained the calculation of the RCNLD, which was done from the information put into the computer, was the first step in determining the value of the property. [County Board Record, pp. 67-68; Transcript, pp. 60-62].

36. Exhibit K was described by Ms. Klaahsen as a spreadsheet of the all sales occurring in Johnson County during 2008. This data provided the first sales ratio in the Assessor’s analysis. Exhibit O was described as a spreadsheet of all valid sales which occurred during

2008. The information in Exhibit O was used to determine final sales ratios. [County Board Record, pp. 69-74, 84-87; Transcript, pp. 62-65].

37. The Assessor's office used the information in Exhibit O to compare sales by certain characteristics such as age, size, quality and condition of properties in order to determine the trend in sales. [County Board Record, pp. 84-87; Transcript, pp. 65-66].

38. Ms. Klaahsen testified Exhibit L identified one neighborhood which included several sales used in their analysis to determine a trend in the sales ratio and, therefore, what adjustment should be made to value the property. The information from this exhibit was entered into the CAMA (RealWare) system to make adjustment to unsold properties. [County Board Record, pp. 75-77; Transcript, pp. 66-67].

39. Ms. Klaahsen stated Exhibit M identified Taxpayer's neighborhood. The neighborhood had few sales, thus in order to determine the property value, the same market adjustment determined in the trend analysis of sold properties with similar characteristics was applied to the unsold properties. [County Board Record, pp. 78-79; Transcript, pp. 67-68].

40. Ms. Klaahsen determined the trend was an increase in value of 5%, which was the result of sales ratio within a range of 95 to 105. The adjustment value was entered into the CAMA (RealWare) system. [County Board Record, Transcript, pp. 68-70].

41. Ms. Klaahsen compared homes of similar age, size, quality and condition to apply the adjustment to the actual sales value in determining a final sales ratio. She stated Exhibit N shows the values of 126 properties after an adjustment was made to each property. [County Board Record, pp. 80-83; Transcript, pp. 60-62, 79-80].

42. Mr. Madden presented Exhibit 8, a letter dated June 15, 2009, sent to the Assessor requesting certain information regarding the five properties provided by the Assessor's office as comparable properties which sold in 2008. Mr. Madden also presented Exhibit 9, a letter dated July 1, 2009, sent to the Assessor. This letter requested additional information regarding the five properties provided by the Assessor's office as comparable properties which sold in 2008, as well as other information regarding his property and neighborhood and sales used or not used in calculations by the Assessor. [County Board Record, pp. 16-18; Transcript, pp. 76-78].

43. Mr. Madden argued at the County Board hearing he did not receive all the documents he should have received in the context of his appeal. He asserted he should have received the information in Exhibit N regarding the 126 homes used in the Assessor's analysis, as Ms.

Klaahsen described. [*Taxpayer's Opening Brief*, pp 1-2; County Board Record, pp. 16-18; Transcript pp. 76-78].

44. Mr. Madden argued the increase in property values by the Assessor, according to the analysis described by Ms. Klaahsen, should have been only 3.8%. [County Board Record, Transcript, pp. 82-83].

45. Ms. Klaahsen believed Taxpayer was not entitled to receive the Assessor's sales ratio documentation even though requested in the context of his appeal. [County Board Record, Transcript, p. 78].

46. Jack Rehm described the three basic appraisal methods as cost, market, and sales comparison. He agreed with the method used by the Assessor, which was a cost plus a market adjustment approach. The "auto comp system" of RealWare was used to select the comparable houses with characters similar to Taxpayer's property to determine the fair market value. [County Board Record, Transcript, pp. 95-99, 101-102].

47. Mr. Rehm admitted it was not standard operating procedure to fail to have documented data for a particular neighborhood which was used to support an increase in value. He asserted, however, it was a decision for each assessor to determine the "paper trail or electronic trail" they use. [County Board Record, Transcript, pp. 93-94].

48. The County Board issued its written decision affirming the Assessor's 2009 fair market value for Taxpayer's property on August 18, 2009. [County Board Record, pp. 88-92].

49. Taxpayer appealed the County Board decision to the State Board effective September 11, 2009. [Letter from Michael K. Madden, State Board Record].

DISCUSSION OF ISSUES AND APPLICABLE LAW

50. 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 County Board decision with the State Board effective September 11, 2009. *Rules, Wyoming State Board of Equalization, Chapter 3 § 2*. [*Taxpayer Notice of Appeal*].

Applicable Law

51. The Wyoming Constitution, article 1, § 6, provides "[n]o person shall be deprived of life, liberty or property without due process of law."

52. The Wyoming Supreme Court has held notice and the opportunity to be heard are the touchstones of due process of law. *LS a/k/a LA v. Johnson County Department of Family Services*, 2006 WY 130, ¶ 8, 143 P.3d 918, 922 (Wyo. 2006); *Mace v. Nocera*, 2004 WY 154, ¶ 18, 101 P.3d 921, 928 (Wyo. 2004); *Pecha v. Smith, Keller & Associates*, 942 P.2d 387, 391 (Wyo. 1977).

53. The Wyoming Supreme Court has stated: “[p]rocedural due process requires reasonable notice and a meaningful opportunity to be heard before government action may substantially affect a significant property interest.” *Amoco Production Company v. Wyoming State board of Equalization*, 7 P.3d 900, 905 (Wyo. 2000), quoting *Pfeil v. Amax Coal West, Inc.*, 908 P.2d 956, 961 (Wyo. 1995). *See also, LS a/k/a LA v. Johnson County Department of Family Services*, 2006 WY 130, ¶ 8, 143 P.3d 918, 922 (Wyo. 2006). “While it is a principle so obvious that it has little attention in our jurisprudence, there can be no question that due process considerations are invoked in administrative proceedings. *ANR Production Co. v. Wyoming Oil and Gas Conservation Comm'n*, 800 P.2d 492 (Wyo.1990); *Jackson v. State ex rel. Wyoming Workers' Compensation Div.*, 786 P.2d 874 (Wyo.1990). Certainly, a failure to follow the statutory procedures must be considered in determining whether a party has been afforded that process which is due.” *Amoco Production v. State Bd of Equalization*, 882 P.2d 866, 872 (Wyo. 1994). *See also, Amoco Production Company v. Wyoming State Board of Equalization*, 7 P.3d 900, 905 (Wyo. 2000).

54. The Wyoming statutes provide in pertinent part:

(b) Appeals. The following shall apply:

(i) The county assessor shall notify any person whose property assessment has been increased by the county board of equalization of the increase. Any person wishing to review an assessment of his property shall contact the county assessor not later than thirty (30) days after the date of assessment schedule. Any person wishing to contest an assessment of property shall file not later than thirty (30) days after the date or postmark date of the assessment schedule properly sent pursuant to W.S. 39-13-103(b)(vii), whichever is later, a statement with the county assessor specifying the reasons why the assessment is incorrect. The county assessor shall provide a copy to the county clerk as clerk of the county board of equalization. **The county assessor and the person contesting the assessment, or his agent, shall disclose witnesses and exchange information, evidence and documents relevant to the appeal, including sales information from relevant statements of consideration if requested, no later than fifteen (15) days prior to**

the scheduled county board of equalization hearing. The assessor shall specifically identify the sales information used to determine market value of the property under appeal. A county board of equalization may receive evidence relative to any assessment and may require the person assessed or his agent or attorney to appear before it, be examined and produce any documents relating to the assessment. No adjustment in an assessment shall be granted to or on behalf of any person who willfully neglects or refuses to attend a meeting of a county board of equalization and be examined or answer any material question upon the board's request. Minutes of the examination shall be taken and filed with the county clerk.

Wyo. Stat. Ann. § 39-13-109(b)(i). (Emphasis added).

(g) Appeals. The following shall apply:

Any person or his agent who wishes to review his property tax assessment or who contests his property tax assessment or valuation in a timely manner pursuant to W.S. 39-13-109(b)(i) is entitled to review statements of consideration for properties of like use and geographic area available to the county assessor in determining the value of the property at issue as provided under W.S. 39-13-109(b)(i). During the review, the county assessor shall disclose information sufficient to permit identification of the real estate parcels used by the county assessor in determining the value of the property at issue and provide the person or his agent papers of all information, including statements of consideration, the assessor relied upon in determining the property value and including statements of consideration for properties of like use and geographic area which were available to the assessor and are requested by the person or his agent. The county assessor shall, upon request, provide the person or his agent a statement indicating why certain property was not used in determining the value of the property at issue. The county assessor and the contestant shall disclose those statements of consideration to the county board of equalization in conjunction with any hearing before the board with respect to the value or assessment of that property.

Wyo. Stat. Ann. § 34-1-142(g).

Discussion

55. Taxpayer presented significant evidence to the County Board on July 23, 2009, which he argued indicated the sales ratio he calculated required a 4% reduction in his property value. This result was based upon information and data he had received through the Assessor's office. *Supra*, ¶¶ 4-15.

56. The Assessor, during the hearing before the County Board on July 23, 2009, presented evidence of the procedure utilized in determining the fair market value of Taxpayer's property. *Supra*, ¶¶ 17-33.

57. The County Board, at the conclusion of the presentation of evidence and closing arguments by both Taxpayer and the Assessor, requested additional and more detailed information or evidence from the Assessor with regard to the neighborhood market adjustment as it was applied to Taxpayer's property. It also requested any other evidence Taxpayer wanted to present. The County Board continued Taxpayer's hearing to the morning of the following day, July 24, 2009, to consider any additional evidence from the Assessor and Taxpayer. *Supra*, ¶ 34.

58. The Assessor and Taxpayer returned on July 24, 2009. The Assessor presented six additional exhibits to the County Board, and provided testimony explaining the exhibits and how the market adjustment was determined for Taxpayer's property. *Supra*, ¶¶ 35-42.

59. Taxpayer, at the conclusion of the Assessor's presentation, and after seeing, for the first time, the new exhibits, stated he had not previously seen or received the information in Assessor's Exhibit N, and had not received any of the information upon which Exhibits L, M, and O, were based. Taxpayer then presented his two new Exhibits - 8 and 9, the letters to the Assessor in which he requested any information she had used to determine his assessment for 2009. *Supra*, ¶¶ 42-43, 46.

60. The presentation by the Assessor of evidence not previously provided to Taxpayer prior to its introduction at the continuation hearing on July 24, 2009, was a clear and unambiguous violation of the statutory mandate that evidence be exchanged "fifteen (15) days prior to the scheduled county board equalization hearing." Such is the required conclusion notwithstanding the fact the County Board itself requested the additional evidence. While a county board of equalization is authorized to request evidence and require the production of documents, the procedure it utilizes in making such a request must keep in mind this 15-day production requirement. *Supra*, ¶ 54; *Wyo. Stat. Ann. § 39-13-109(b)(i)*.

61. It appears as well the Assessor may have violated the provisions of *Wyo. Stat. Ann. § 34-1-142(g)* which entitles any person who timely contests his valuation to review all of the statements of consideration for the properties of like use and geographic area available to the

county assessor [not just used] in determining the value of the property at issue. *Supra*, ¶ 54. The County Board Record reflects two letter requests from Taxpayer, in particular Exhibit 9, the July 1, 2009, letter, which unquestionably fall within the purview of this statutory mandate. It appears from the County Board Record the Assessor failed to provide Taxpayer the information he requested. *Supra*, ¶¶ 42, 43.

62. Taxpayer has not directly raised these statutory requirements as an issue in this appeal to the State Board, although he did indirectly object to the introduction of the additional evidence at the County Board hearing. *Supra*, ¶¶ 42, 43.

63. The failure to comply with the noted statutory requirements, in particular the requirements of Wyo. Stat. Ann. § 39-13-109(b)(i), are of such a magnitude as to render unnecessary a direct objection on appeal to the State Board. All taxpayers who appeal an assessor's valuation determination are entitled to procedural due process. Such due process was not afforded Taxpayer during his County Board hearing. If the County Board had continued Taxpayer's hearing for at least 15 days to allow him time to review and prepare a response to the Assessor's additional evidence, the requirements of Wyo. Stat. Ann. § 39-13-109(b)(i), and possibly Wyo. Stat. Ann. § 34-1-142(g), would arguably have been fulfilled. *Supra*, ¶¶ 51, 52, 53, 54.

64. The only adequate remedy for the failure of procedural due process such as occurred at the County Board hearing is to vacate the County Board Order Upon Hearing and remand this matter to the County Board for a final decision after Taxpayer has had an opportunity to prepare a meaningful response to the additional evidence presented by the Assessor at the continuation of his hearing on July 24, 2009.

65. We would also note the continuation of Taxpayer's appeal hearing to the morning of July 24, 2009, appears, based on the County Board Record, to have been combined with another taxpayer's appeal without prior notice to that taxpayer. The combining of county board equalization hearings without prior notice and the consent of all taxpayers and the county assessor is not a good practice not only for purposes of the clarity of evidence, but as well for purposes of procedural due process. *Supra*, ¶¶ 51, 52, 53, 54.

66. The County Board proceedings with regard to Taxpayer's challenge of the 2009 valuation of his property being contrary to law, consideration of any further issues by the State Board is unnecessary.

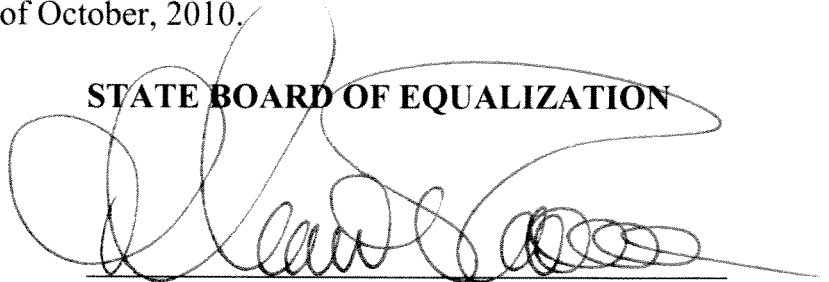
ORDER

IT IS THEREFORE HEREBY ORDERED the Decision and Order of the Johnson County Board of Equalization is **vacated** and this matter is **remanded** for a new hearing in accordance with this opinion.

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 20th day of October, 2010.

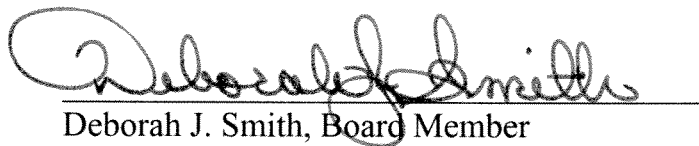
STATE BOARD OF EQUALIZATION



Thomas D. Roberts, Chairman

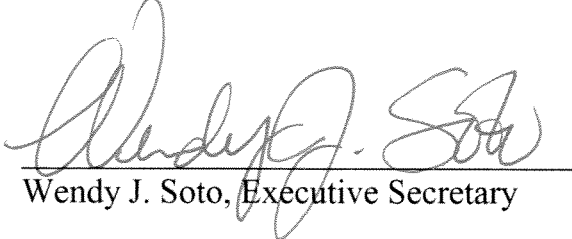


Steven D. Olmstead, Vice-Chairman



Deborah J. Smith, Board Member

ATTEST:



Wendy J. Soto, Executive Secretary

CERTIFICATE OF SERVICE

I hereby certify that on the 20th day of October, 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:

Michael K. Madden
63 Langdon Road
Buffalo WY 82834

Ms. Dorothy R Elsom
Johnson County Assessor
76 N Main Street
Buffalo WY 82834



Jana R. Fitzgerald
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State Board of Equalization
P.O. Box 448
Cheyenne, WY 82003
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cc: SBOE
Edmund J. Schmidt, Director, Department of Revenue
Marvin Applequist, Property Tax Division, Department of Revenue
Commission/Attorney/Treasurer/Clerk - Johnson County
CCH
ABA State and Local Tax Reporter
State Library
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