

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

IN THE MATTER OF THE APPEAL OF)
FRED REYNOLDS FROM)
A DECISION OF THE PARK COUNTY) Docket No. **2010-108**
BOARD OF EQUALIZATION - 2010)
PROPERTY VALUATION)

DECISION AND ORDER

APPEARANCES

Fred Reynolds (Taxpayer), appeared *pro se*.

Doug “Rip” Brandt, Park County Assessor, and Pat Meyer, Deputy Park County Assessor and Park County Assessor Elect, and James F. Davis, Deputy Park County Attorney, appeared on behalf of Park County Assessor¹ (Assessor).

DIGEST

This is an appeal from a decision of the Park County Board of Equalization (County Board) affirming the Assessor’s valuation of Taxpayer’s property for 2010 tax purposes. Taxpayer’s Notice of Appeal was filed with the State Board effective August 6, 2010. Both Taxpayer and the Assessor filed briefs, as allowed by the October 29, 2010, State Board Briefing Order. Taxpayer requested oral argument on November 5, 2010.

The State Board of Equalization (State Board), comprised of Chairman, Steven D. Olmstead, Vice-Chairman, Deborah J. Smith, and Board Member, Paul Thomas Glause², considered the

¹ Doug “Rip” Brandt was the Park County Assessor at the time this appeal was filed. Mr. Brandt retired at the end of his elected term in December 2010. Pat Meyer was elected Park County Assessor and took office in January 2011.

² Thomas D. Roberts’ term on the State Board expired on March 1, 2011. Paul Thomas Glause was appointed to the State Board on March 1, 2011, and participated in this decision by reviewing the case record.

parties' filings, the hearing record, and the decision of the County Board. The State Board heard oral argument on January 31, 2011.

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 vacate the \$50.00 administrative cost assessment levied against Taxpayer. We reverse the decision of the County Board and remand this matter for a new hearing.

ISSUES

Taxpayer raised two issues in his Notice of Appeal filed with the Board:

First, whether he was given proper notice of the hearing before the County Board, in accordance with the Park County Board of Equalization Rules and Regulations.

Second, whether he was improperly assessed a \$50.00 fee for administrative costs. [*Taxpayer's Opening Brief*].

The Assessor stated two points, which would be considered issues in the Brief filed with the Board:

First, Taxpayer cannot present any additional evidence before the State Board, as he failed to appear before the County Board to present evidence.

Second, the State Board is without authority to consider the \$50.00 fee assessed to Taxpayer by the County Board as administrative costs. [*Assessor's Response Brief*].

PROCEEDINGS BEFORE THE COUNTY BOARD

The County Board conducted a hearing on July 20, 2010, at which Taxpayer did not appear. No evidence was received on behalf of Taxpayer, except Taxpayer's initial "Statement to Contest Property Tax Assessment" form and attachment. The County Board entered its Final Decision on July 27, 2010, denying Taxpayer's appeal and affirming the Assessor's 2010 valuation. The County Board assessed Taxpayer administrative costs of fifty dollar (\$50.00). [County Board Record, pp.1-5, 22-26].

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 August 6, 2010. *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. § 16-1-114(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. Fred Reynolds owns residential property at 12 Bartlett Lane, Cody, Park County, Wyoming. [County Board Record, pp. 1-3, 7, 22].
2. The Assessor mailed the Park County "2010 Notice of Assessment" to Taxpayer on or about April 16, 2010. [County Board Record, pp. 22, 33].
3. Taxpayer, on or about April 26, 2010, filed an official appeal, "Statement to Contest Property Tax Assessment," for his 2010 property assessment. [County Board Record, pp. 1-5]. Park County Clerk sent a letter, by certified mail with a return receipt, to Taxpayer dated June 11, 2010, notifying Taxpayer that appeal hearings would be heard before the County Board on July 14, and July 15, 2010. Mr. Reynolds received this notice on June 21, 2010. Included with the June 11, 2010, letter was a copy of the Park County Board of Equalization Rules and Regulations. This letter indicated Taxpayer would be "notified of the specific date and time of your [Taxpayer] appeal hearing at least one week prior to your appointment." [County Board Record, pp. 6-16, 23; Audio Recording of Hearing of July 15, 2010].
4. The Park County Clerk sent a letter dated July 2, 2010, by certified mail with return receipt, to Taxpayer providing a notice the Park County Board of Equalization hearing on his appeal would be held July 15, 2010, at 1:00 to 2:00 p.m. in the county commissioners' meeting room. This letter to Taxpayer was unclaimed and was returned to the Park County Clerk on July 21, 2010. [County Board Record, pp. 17-18, 24; Audio Recording of Hearing of July 15, 2010].

5. Taxpayer failed to appear at his scheduled hearing before the County Board on July 15, 2010. It was not clear whether Taxpayer received notice of the actual date and time of the hearing. The County Board, therefore, continued Taxpayer's appeal hearing to July 20, 2010. Taxpayer was to be given notice of the rescheduled hearing with personal service by the Park County Sheriff's Office. [County Board Record, pp.19, 22-24, 28-30; Audio Recording of Hearing of July 15, 2010 and July 20, 2010].

6. Taxpayer was served the notice of the July 20, 2010, hearing by the Park County Sheriff's Office on July 19, 2010, at or about 11:15 a.m. [County Board Record, pp. 19-21, 24; Audio Recording of Hearing of July 20, 2010].

7. The County Board convened at 1:00 p.m. on July 20, 2010, to hear Taxpayer's 2010 property assessment appeal. Taxpayer failed to appear. The Park County Clerk advised the County Board that Taxpayer had been served with notice of the hearing by the Park County Sheriff's Office and the County Board briefly discussed the date and time the notice was served by the sheriff's office. The County Board, during Taxpayer's July 20, 2010 hearing, discussed the notice provided to Taxpayer and his failure to appear at the hearing. No evidence was received regarding the merits of Taxpayer's appeal. The County Board denied Taxpayer's appeal and determined Taxpayer willfully neglected to attend the hearing. The County Board decided to assess Taxpayer fifty dollars (\$50.00) for administrative costs, due to Taxpayer's failure to appear before the County Board at the scheduled hearing, in violation of the County Board's Rules and Regulations. [County Board Record, pp. 24, 30; Audio Recording of Hearing of July 20, 2010].

8. The County Board issued its "Final Decision" concerning Taxpayer's 2010 property assessment appeal on July 27, 2010. The County Board denied Taxpayer's appeal. The County Board issued an assessment to Taxpayer in the amount of \$50.00 on August 6, 2010, finding Taxpayer willfully neglected to appear at his scheduled hearing. [County Board Record, pp. 22-26, 31-31; Audio Recording of County Board of Equalization Meeting of July 27, 2010].

9. Taxpayer timely appealed the County Board's decision to the State Board. Taxpayer argued he was inappropriately assessed \$50.00 by the County because he was given less than 48 hour notice of the County Board's hearing on his tax appeal and should not be subject to the assessment. [*Notice of Appeal; Taxpayer Opening Brief*; Audio Recording, Oral Argument, January 31, 2011].

DISCUSSION OF ISSUES AND APPLICABLE LAW

10. 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, State Board Record*.

Applicable Law

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

12. The Wyoming Supreme Court has held “notice and the opportunity to be heard are the touch stones of due process of law.” *Pecha v. Smith, Keller & Associates*, 942 P.2d 387, 391 (Wyo. 1997); *In re CS*, 2006 WY 130, ¶ 8, 143 P.3d 918, 922 (Wyo. 2006).

13. 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 ¶¶ 12, 13, (Wyo. 2000), quoting *Pfeil v. Amax Coal West, Inc.*, 908 P.2d 956, 961 (Wyo. 1995).

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).

14. The Wyoming Supreme Court recognized:

Due process is a flexible concept which calls for such procedural protections as the time, place and circumstances demand. (citations omitted). In order to determine the specific dictates of due process in a given situation, it is necessary to balance three distinct factors: (1) the private interest that will be affected by the official action; (2) the risk of an erroneous deprivation of such interest through the procedures used, along with the probable value, if any, of

additional or substitute procedural safeguards; and (3) the government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirements would entail. (citation omitted).

State of Wyoming, Department of Transportation v. Robbins, 2011 WY 23, ¶ 13, 246 P.3d 864, 866 (Wyo. 2011). (citations omitted).

15. The Wyoming Supreme Court expressed:

Any attempt to ascertain the powers of an administrative agency must begin with the proposition that only those powers expressly conferred by the legislature are granted to an agency. (citations omitted).

“Stated in another manner, an administrative body has only the power and authority granted by the constitution or statutes creating the same * * *. Such statutes must be strictly construed or ‘any reasonable doubt of existence of any power must be resolved against the exercise thereof’* * *. (citations omitted.) *Tri-County Electric Association, Inc. v. City of Gillette*, 525 P.2d 3, 8-9 (1974).”

Hupp v. Employment Sec. Com'n, 715 P.2d 223, 225 (Wyo. 1986).

16. The Wyoming Supreme Court stated:

[A]n agency must limit its activities to those authorized by the legislature:

It is axiomatic that an agency has and may properly exercise only those powers authorized by the legislature. (citations omitted). An agency is wholly without power to modify, dilute or change in any way the statutory provisions from which it derives its authority. When an administrative agency takes an action that exceeds its authority by law, that action is null and void. (citation omitted).

Wyoming Dept. of Revenue v. Guthrie, 2005 WY 79, ¶ 18, 116 P.3d 1086, 1093 (Wyo. 2005).

17. The Wyoming Supreme Court expressed:

[A]dministrative agencies are bound to comply with their enabling statutes. (citation omitted). An administrative rule or regulation which is not expressly or impliedly authorized by statute is without force or effect if it adds to, changes, modifies, or conflicts with an existing statute. Conversely, a rule or regulation which is expressly or impliedly authorized by the enabling statute will be given force and effect.

Diamond B Services, Inc. Rohde, 2005 WY 130, ¶ 60, 120 P.3d 1031 (Wyo. 2005). (citing, *Billings v. Wyo Bd. Of Outfitters and Guides*, 2001 WY 81, ¶ 24, 30 P.3d 557, 568-569 (Wyo. 2001). See, *BP America Production v. Dept. of Revenue*, 2006 WY 27, ¶ 28, 130 P.3d 438, 466-467 (Wyo. 2006).

18. The Wyoming statutes concerning the appeal of local assessment 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).

19. The Rules and Regulations of the Board of Equalization for the County of Park, at Section 8(b) state:

At the hearing the Board may receive evidence relative to any assessment and may require the petitioner or his/her agent or attorney to appear before it, be examined and produce documents relating to their assessment. The petitioner may choose to be represented by an attorney who is duly authorized to practice law in the State of Wyoming. No adjustment in an assessment will be granted to or on behalf of any person who willfully neglects or refuses to attend a meeting of the Board and be examined or answer any material question upon the Board's request. The Assessor may be represented by himself/herself or any of his/her employees. The Board of County Commissioners and the Assessor will determine any arrangement for separate legal counsel for the Assessor if necessary. The Board may request the assistance of the Office of County Civil Counsel on all matters before the Board. Any petitioner who willfully fails to attend or have an agent attend the scheduled Board hearing without notice to the Board forty-eight (48) hours in advance of scheduled Board hearing may be charged fifty dollars (\$50.00) for administrative costs incurred by the Board.

20. The Wyoming Administrative Procedure Act provides in pertinent part: "In any contested case, all parties shall be afforded an opportunity for hearing after **reasonable notice served** personally or by mail." (Emphasis added). *Wyo. Stat. Ann. § 16-3-107(a)*.

21. Reasonable notice is defined as: "notice that is fairly to be expected or required under the particular circumstances." *Black's Law Dictionary*, 8th Ed. p. 1091 (Thomson West, 2004).

22. In considering the County Board's assessment administrative costs as a sanction, the Board must look to the Wyoming Supreme Court for guidance in this matter. The Court held "[c]osts were unknown at common law Costs are recoverable and may be awarded only if authorized by statute and then may be awarded only to parties to the litigation in amounts

supported by evidence as having been incurred and reasonable.” *Bi-Rite Package, Inc. v. District Court of the Ninth Judicial District of Fremont County*, 735 P.2d 709, 712 (Wyo 1987) (citations omitted). “Costs are purely statutory, as they did not exist at common law.” *Snyder v. Lovercheck*, 992 P.2d 1079, 1091 (Wyo. 1999).

Discussion

23. Taxpayer did not appear before any of the County Board hearings scheduled in the matter of his 2010 property tax assessment appeal. No evidence was presented by the Taxpayer at any of the County Board hearings in his matter. The only information provided by Taxpayer was his “Statement to Contest Property Tax Assessment” form and attachment. *Supra*, ¶¶ 4, 5, 7.

24. Although Taxpayer received notice, by certified mail, his tax appeal hearing would be held on July 14 or July 15, 2010, no specific date or time was set by the County Board. Taxpayer eventually received notice of a rescheduled tax appeal hearing before the County Board through personal service by the Park County Sheriff’s Office at 11:15 a.m. on July 19, 2010, about 26 hours before the scheduled hearing. For whatever reason, Taxpayer failed to appear at the County Board hearing scheduled for 1:00 p.m. on July 20, 2010. *Supra*, ¶¶ 3, 5-7.

25. The County Board determined Taxpayer willfully neglected to attend his tax appeal hearing. The County Board denied Taxpayer’s appeal and assessed Taxpayer \$50.00 for costs, as provided by the County Board’s Rules. *Supra*, ¶¶ 7-8.

26. In a Motion to Dismiss filed by the Assessor on August 26, 2010, the Assessor argued the State Board does not have authority or jurisdiction to hear Taxpayer’s appeal regarding the County Board’s \$50.00 administrative cost assessment, and requested Taxpayer’s appeal be dismissed. The Assessor’s Motion to Dismiss was denied by this Board on September 28, 2010. This Board disagreed with the Assessor, because Taxpayer’s issues in this matter can be reviewed by the State Board, as a matter of law. An appeal of the County Board’s decision to the State Board is the proper recourse for Taxpayer. *Wyo. Stat. Ann. § 39-13-109(b)(i)*. [*Assessor’s Response Brief*]; *Supra*, ¶¶ 8-9, 18.

27. As a threshold matter, we must determine whether the County Board, by its rules, had authority to impose \$50.00 administrative costs to Taxpayer for failing to appear at the scheduled tax appeal hearing. A review of the relevant Wyoming statutes pertaining to tax assessment appeals and administrative procedures, reveals no authority to assess administrative costs for failing to appear at a hearing. *Supra*, ¶¶ 18-19, 22. *Wyo. Stat. Ann. § 39-13-109(b)(i)*; *Wyo. Stat. Ann. § 16-3-107*.

28. The Assessor provided no authority or cogent argument regarding the ability of the County Board to assess Taxpayer the \$50.00 administrative costs. The Assessor admitted he did not know of any authority the County Board had to include a \$50.00 assessment for failing to appear at a tax assessment appeal hearing. [Audio Recording, Oral Argument, January 31, 2011; *Assessor's Response Brief*].

29. The only sanction expressed in Wyoming statutes for failing to appear at a tax appeal hearing would be to deny the Taxpayer's appeal and relief requested. *Wyo. Stat. Ann. § 39-13-109(b)(i)*. It is clear, in this matter, the County Board exceed its authority by imposing the \$50.00 administrative cost to Taxpayer. As such, the \$50.00 administrative cost must be vacated. *Supra*, ¶¶ 14-18, 22.

30. The next issue is whether Taxpayer received adequate notice of the setting of tax appeal hearing before the County Board. As a matter of law, parties involved in an administrative contested case, as is this matter, are entitled to a reasonable notice of the setting of hearing. *Wyo. Stat. Ann. § 39-13-109(b)(i)*; *Wyo. Stat. Ann. § 16-3-107*. *Supra*, ¶¶ 11-13, 20-21.

31. The County Board attempted twice to give notice to Taxpayer. However, the first notice did not give Taxpayer a date and time of his hearing, and a subsequent notice of hearing was required. The second notice by the County Board was sent by certified mail, and was not claimed by Taxpayer. Not for the lack of the County Board trying to set a hearing in a timely manner and give proper notice to Taxpayer, there were a series of missteps resulting in Taxpayer being served notice of his hearing only 26 hours before the hearing. By County Board's Rules, Taxpayer was to provide notice at least 48 hours in advance to the County Board or County Clerk that he could not attend the hearing. *Supra*, ¶¶ 3-7, 19. The Park County Sheriff's Office was unable to personally serve Taxpayer the notice until July 19, 2010, roughly one day before the hearing. *Supra*, ¶¶ 5-6.

32. Even if Taxpayer was able to provide notice to the County Board of his inability to attend the scheduled hearing, he was trapped in a default by the County Board's Rules and Regulation requiring 48 hours notice in advance of his inability to attend. *Supra*, ¶¶ 6-8, 19.

33. The County Board, during its deliberations regarding Taxpayer's appeal, considered the short notice of the hearing provided to Taxpayer by the Park County Sheriff's Office service, but summarily determined that Taxpayer's failure to appear at the hearing was willful neglect. The County Board, in addition to the \$50.00 assessment, denied Taxpayer's 2010 tax assessment appeal and affirmed the Park County Assessor's 2010 valuation. *Supra*, ¶¶ 7-8.

34. The notice of the rescheduled hearing received by Taxpayer one day prior to the hearing was unreasonable under these particular circumstances. The County Board disregarded Taxpayer's due process rights, by providing inadequate notice of the hearing. Taxpayer should be allowed to present evidence, if any, in support of his appeal, with due process and reasonable notice and with an opportunity to be heard at a new hearing. *Supra*, ¶¶ 11-14, 20-21.

35. 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 Final Decision and remand this matter to the County Board for Taxpayer to have an opportunity to prepare a meaningful response with timely and adequate notice of the date, time, and place of the hearing.

36. The County Board proceedings with regard to Taxpayer's challenge of the 2010 valuation of his property being contrary to law, consideration of any further issues raised by Taxpayer to the State Board are unnecessary.

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ORDER


IT IS THEREFORE HEREBY ORDERED the Park County Board of Equalization's Final Decision dated July 27, 2010, affirming the Assessor's 2010 valuation of Taxpayer's property is **vacated**, and this matter **remanded** to the Park County Board of Equalization for further proceedings as required. The County Board's order for the \$50.00 administrative costs to Taxpayer is **vacated**.

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 21st day of July, 2011.

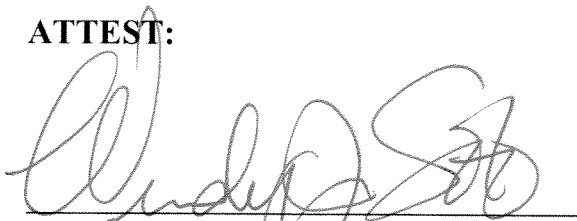
STATE BOARD OF EQUALIZATION


Steven D. Olmstead, Chairman


Deborah J. Smith, Vice-Chairman


Paul T. Glause, Board Member

ATTEST:


Wendy J. Soto, Executive Secretary

CERTIFICATE OF SERVICE

I hereby certify that on the 21st day of July, 2011, 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:

Fred Reynolds
12 Bartlett Lane
Cody WY 82414

Pat Meyer
Park County Assessor
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Cody WY 82414

James F. Davis
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