

BEFORE THE STATE BOARD OF EQUALIZATION

FOR THE STATE OF WYOMING

IN THE MATTER OF THE APPEAL OF)
JOHN WIRTH, JR., FROM A DECISION)
OF THE FREMONT COUNTY) Docket No. **2010-110**
BOARD OF EQUALIZATION - 2009)
PROPERTY VALUATION)

DECISION AND ORDER

APPEARANCES

Philip A. Nicholas and Julie Wickett, Nicholas & Tangeman, LLC for the Wirth Revocable Trust, John R. Wirth, Jr. Trustee (Taxpayer).

Jodi A. Darrough, Deputy Fremont County Attorney, for Eileen Oakley¹, Fremont County Assessor (Assessor).

DIGEST

This is an appeal from a decision of the Fremont County Board of Equalization (County Board) affirming the Assessor's valuation of Taxpayer's property for 2009 tax purposes. The Notice of Appeal by Taxpayer was filed with the State Board of Equalization (State Board) effective August 10, 2010. The Assessor and Taxpayer filed briefs as allowed by the October 29, 2010, State Board Briefing Order. Oral argument was held at the request of Taxpayer on January 31, 2011, pursuant to a State Board order entered November 9, 2010.

The State Board, comprised of Thomas D. Roberts, Chairman, Steven D. Olmstead, Vice-Chairman, and Deborah J. Smith, Board Member, considered the Notice of Appeal, the Opening Brief of Petitioner Wirth Revocable Trust, the Brief of Respondent, the County Board Record, as well as the Decision of the Fremont County Board of Equalization and oral argument by both parties.

¹ Ms. Oakley retired as Fremont County Assessor effective December 31, 2010. Ms. Tara Berg is the current Fremont County Assessor.

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

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

We reverse the decision of the County Board.

ISSUES

Taxpayer, in his opening brief, sets out four issues:

A. Was the Assessor permitted under Wyoming law to carry forward a market adjustment factor from prior years in calculating Petitioner's property assessment for 2009?

B. Was the Assessor's use of only one comparable sale from 2008 for her ratio analysis proper and authorized by Wyoming laws, rules, and regulations?

C. Was the Assessor's reliance on sales from prior years to complete a ratio analysis, without adjustment, proper and authorized by Wyoming laws, rules and regulations?

D. Is the Taxpayer entitled to County-Wide Sales Data which can be readily and easily developed through the use of a simple syntax query, but which includes information derived from statements of consideration?

[*Opening Brief of Petitioner Wirth Revocable Trust*, p. 1].

The Assessor identifies the issue as: "Whether Respondent's adjustment to the valuation derived by the CAMA system is in accordance with the constitution and laws of the State of Wyoming, the Rules and Regulations adopted by the Wyoming Department of Revenue, and the Rules adopted by the State Board of Equalization." [*Brief of Respondent*, p. 1].

PROCEEDINGS BEFORE THE COUNTY BOARD

Taxpayer timely filed a Statement to Contest 2009 Property Tax Assessment with the Fremont County Assessor on May 11, 2009. A County Board hearing was scheduled for July 15, 2009, then rescheduled for July 21, 2009. Taxpayer then filed a Motion to Compel and for Continuance with the County Board on July 16, 2009, requesting the County Board compel production by the Assessor of certain electronic data, and to continue the County Board hearing. The County Board denied both requests by order dated July 16, 2009. Taxpayer, in response to the County Board denial, immediately filed a Request for Emergency Hearing on Motion for Stay and Injunctive Relief with the Ninth Judicial District Court, Fremont County. The District Court entered an Order Compelling Discovery on March 19, 2010, and an Order Denying Motion to Amend on September 7, 2010. [County Board Record, pp. 1-35A].

The County Board conducted a hearing on June 29, 2010, and entered its Decision on July 13, 2010, affirming the Assessor's 2009 fair market value for Taxpayer's property. The decision was mailed to Taxpayer on July 13, 2010. [County Board Record, pp. 263-268].

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 10, 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))*.

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 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 *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. John Wirth, Jr. and Billie Jean Wirth, as Trustees of the Wirth Revocable Trust, are record owners of property at 8 Sylvan Way, more particularly described as Lots 13, 14, 17, & 19 of the Cathedral Park Addition, located in Dubois, Fremont County, Wyoming. The subject property consists of 7.2 acres on a river with a single family residence and detached garage. The residence was built in 1968. It has 2430 square feet on the main floor with 1280

square feet of finished basement. There is a 1620 square foot detached garage built in 1988. The garage is fair plus quality and good condition. The last field review of Taxpayer's property was October 12, 2007. [County Board Record, pp. 3, 175, 187; Recording, Track Two 34.58 - 37.07].

2. A Notice of Assessment for the 2009 tax year indicating a fair market value of \$552,677 for the land and improvements was sent to Taxpayer on April 15, 2009. [County Board Record, pp. 3, 187; Recording, Track Two 34.58 - 35.36].

3. Taxpayer timely filed a Statement to Contest 2009 Property Tax Assessment with the Fremont County Assessor on May 11, 2009, asserting, in summary, the subject property was not assessed at fair market value, and the 2009 assessment did not comply with Wyoming statutes or the Department rules and regulations. The County Board conducted a hearing on June 29, 2010, and entered its Decision on July 13, 2010, affirming the Assessor's 2009 fair market value for Taxpayer's property. The decision was mailed to Taxpayer on July 13, 2010. [County Board Record, pp. 1-2, 263-268].

4. Eileen Oakley, the Fremont County Assessor, and her deputy, Ms. Tara Berg, were certified in 2009 as Wyoming tax appraisers as statutorily required in order to set values in Wyoming. *Wyo. Stat. Ann. § 18-3-201(d)*. [County Board Record, Recording, Track Two 34.25 - 34.58].

5. Ms. Oakley testified that in using the computer assisted mass appraisal [CAMA] system, certified appraisers from the Fremont County Assessor's Office gather the physical characteristics such as age, size, and construction type for each structure in the county. A quality (ranging from low to excellent), as well as a condition factor (ranging from poor to excellent), both as defined in the Marshall & Swift Manual, are also assigned to each structure. A depreciation factor is calculated in the CAMA system for each structure based on the structure's age. [County Board Record, pp. 188-198; Recording, Track Two 36.08 - 36.47].

6. Ms. Berg, as Deputy Fremont County Assessor, testified she entered the physical characteristics for Taxpayer's property into the CAMA system for the 2009 valuation. The final value determination was, however, a collaboration between herself and Ms. Oakley. [County Board Record, Recording, Track One, 40.20].

7. The replacement cost new [RCN] for Taxpayer's residence was based on its square footage, as well as other characteristics. The RCN for the residence for 2009 was \$296,082. The allowed depreciation was \$79,942, which when deducted from the RCN, resulted in a RCN less depreciation [RCNLD] of \$216,140. Application of a market adjustment factor of

1.6 times the RCNLD resulted in a market value of \$345,824. The same process for the garage resulted in an RCNLD of \$28,637, and a market value, using a 1.6 market adjustment factor, of \$45,819. The allowed depreciation for each structure was calculated by the Marshall & Swift cost tables in the CAMA system based on the year the structure was constructed. [County Board Record, pp. 197-198; Recording, Track One, 42.00 - 46.50].

8. The cost tables used by the Assessor were generated by Marshall & Swift from national data, adjusted by region, and supplied to the Assessor by the Department. [County Board Record, pp. 197-198; Recording, Track One, 46.50 - 49.00].

9. The total RCNLD of Taxpayer's two structures, based on the Marshall & Swift cost tables in the CAMA system, was \$244,777 (\$216,140 + 28,637). [County Board Record, pp. 197-198; Recording, Track One, 49.00 - 50.18].

10. The market adjustment factor of 1.6 which the Assessor applied to the RCNLD was not generated by the CAMA system. It was a factor derived by the Assessor based on a ratio analysis or study, and then entered into the CAMA system. The Department Rules, for 2009 valuation, did not describe how to perform a ratio study, and, according to Ms. Berg, the Department had not provided any written guidance on how to do such a study. [County Board Record, pp. 197-198; Recording, Track One, 50.18 - 51.30, 52.40].

11. Ms. Berg testified a ratio study considers the RCNLD as compared to the price for which a property actually sold. The study considers similar homes which the Assessor categorizes using appraisal judgement into groups. [County Board Record, Recording, Track One, 51.30 - 53.12].

12. Ms. Berg attended International Association of Assessing Officers [IAAO] seminars to learn how to perform a sales ratio analysis. She was familiar with the IAAO Standards on Ratio Studies and IAAO Guide to Assessment Administration Standards: A Special Paper Prepared by the Technical Standards Committee. [County Board Record, Recording, pp. 42-80; Track One, 55.55 - 59.30].

13. The IAAO suggests a new sales ratio study should be performed each year based on new data. The IAAO also suggests a study with fewer than five sales tends to have poor reliability, and is thus not very useful. A ratio study is a statistical mechanism designed to make adjustments to the RCNLD. Ms. Berg agreed the market adjustment factor must be statistically accurate. Ms. Berg stated she did not have a background in statistics. [County Board Record, p. 49; Recording, Track One, 59.30 - 1.06.50].

14. The 1.6 market adjustment factor indicates a determination by the Assessor Taxpayer's property was worth 160% more than its RCNLD. The factor was derived using 2006, 2007, and 2008 sales as allowed by the IAAO Standards, although consideration should be given to adjusting the prior years sales prices for time. There was only one valid sale in 2008. Ms. Berg testified she did not consider performing any kind of trend analysis for the prior years sales. She acknowledged she did not know how to do a trending analysis in 2009. [County Board Record, pp. 49, 262; Recording, Track One, 1.06.50 - 1.07.50, 1.18.30 - 1.19.25; Track Two 0.0 - 2.20].

15. Ms. Oakley testified the 1.6 market adjustment factor applied to determine 2009 market values was not based on a ratio analysis of the single valid 2008 sale in the same Neighborhood as Taxpayer's property. The market adjustment factor was based on the 2008 sale, plus sales in two prior years (2006 and 2007) as allowed under the IAAO Standards. Ms. Oakley stated she did not trend the 2006 and 2007 sales even though adjusting prior years sales for time was suggested by the IAAO Standards. [County Board Record, pp. 49, 261; Recording, Track Two 1.04.13 - 1.09.55].

16. Ms. Oakley briefly mentioned the 2006, 2007, and 2008 sales information which she asserted was used to determine the 2009 valuation for Taxpayer's property. The 2009 sales which Taxpayer referenced in his exhibits were not used by the Assessor in valuing Taxpayer's property for 2009. [County Board Record, pp. 176-178; Recording, Track Two 37.21 - 38.14, 58.08 - 58.49].

17. The Assessor presented a document identified as Exhibit A at the County Board hearing which described an LEA [land economic area] as a land marketing area defined by physical boundaries or by like forces affecting the marketing of properties. The exhibit indicated all properties in the rural Dubois area located along waterways were grouped into LEA 430R. The land in LEA 430R was valued at \$40,000 per acre for the first five acres; \$7000 per acre for acres 6 through 15; and \$3725 per acre for each acre over 15 acres. [County Board Record, p. 180].

18. The Assessor's Exhibit A also described the calculation of the market adjustment factor which was applied to determine the 2009 value for Taxpayer's property. The Assessor considered sales of property in LEA 430R in 2006, 2007, and 2008. She determined, in her "discretion," the price of the 2006 and 2007 sales did not need to be adjusted for time as recommended by the IAAO Standard on Ratio Studies, § 6.4. Exhibit A stated the adjustment factor of 1.6 had not been changed since it was first established in 2007. [County Board Record, pp. 181-182].

19. John Wirth testified on behalf of Taxpayer. He has a Ph.D. in engineering with a dissertation in statistical analysis in the marketing venue. He was a member of the Senate File 144 Committee appointed by the Department to offer suggestions for Department Rules on statistical standards. Mr. Wirth testified in conjunction with his work on the Senate 144 Committee he became familiar with the IAAO Standard on Ratio Studies; A Guide to Assessment Administration Standards - IAAO; Level of Assessment Determination: An Owner's Manual for Maintaining Uniformity (New York); New Hampshire ASB Guidelines Recommended to DRA; Utah State Tax Commission Property, Tax Division 2004 Assessments/Sales Ratio Study; Assessment & Sales Information, South Dakota Department of Revenue and Regulation; 2006 Assessment Ratio Report - Maryland; Survey of Ratio Study Methods Used by the State - New York; and Level of Assessment Determination: An Owner's Manual for Maintaining Uniformity - New York. He further stated he performed analysis in SPSS on four Wyoming county data sets (Albany, Campbell, Hot Springs, and Washakie) for the Committee. He indicated SPSS was the statistical package used by the Assessors. [County Board Record, pp. 42, 72, 80, 87, 90, 112, 119, 122, 129; Recording, Track Two 2.25 - 9.15].

20. Mr. Wirth also testified, in his opinion, the numerous Neighborhoods in Fremont County, were too small to provide any reliable sales data. Many of the Fremont County LEAs and Neighborhoods had no sales, thus he asserted no market adjustment factor could be statistically justified. Mr. Wirth urged a minimum sample for statistical purposes should have at least five sales. If there were not five sales in a given year, the property stratification should be expanded to include more sales, or prior years sales utilized with a trending analysis. [County Board Record, Recording, Track Two 9.15 - 17.00].

21. Mr. Wirth asserted, based on his background and study of sales ratio analysis, the Assessor applied a neighborhood adjustment factor to the 2009 RCNLD for his property based on prior years sales. She simply carried forward the adjustment factor from a prior year. He asserted such carry-forward was not authorized by any sales ratio analysis information and material which he had reviewed. He also stated the carrying forward of an adjustment factor was discussed by the Senate File 144 Committee, which concluded such a procedure was not appropriate. [County Board Record, Recording, Track Two 17.00 - 19.20].

22. Mr. Wirth further stated that because he was not allowed to have county-wide sales data, he could not develop a market adjustment factor for application to his property as an alternative to the one generated by the Assessor. He thus argued the 2009 value for his property should be the CAMA generated RCNLD value plus the land value. He based his argument in part on the fact the revised Department Rules, which went into effect late in 2009, as well as the prior Department Rules, recognize the RCNLD value to be an acceptable

value if there were insufficient sales to develop a market adjustment. The RCNLD plus land value for his property for 2009 would therefore have been \$405,811 (\$244,777 - RCNLD plus \$161,034 - Land). [County Board Record, Recording, Track Two 19.20 - 34.25].

DISCUSSION OF ISSUES AND APPLICABLE LAW

23. The State Board is authorized to “hear appeals from county boards of equalization.” *Wyo. Stat. Ann. § 39-11-102.1(c)*. Taxpayers filed a timely appeal of the County Board decision with the State Board effective August 10, 2010. *Rules, Wyoming State Board of Equalization, Chapter 3 § 2*.

Applicable Law

24. 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.”

25. 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.”

26. 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).

27. 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)*.

28. 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).

29. Each county assessor annually determines the fair market value of real and personal property within their county. *Wyo. Stat. Ann. 18-3-204(a)(i), (ii), (vi); Wyo. Stat. Ann. 39-13-103(b)(i).* In so doing, the assessor must “[f]aithfully and diligently follow and apply the orders, procedures and formulae of the department of revenue or orders of the state board of equalization for the appraisal and assessment of all taxable property.” *Wyo. Stat. Ann. § 18-3-204(a)(ix).*

30. 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).*

31. 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 “Replacement Cost.” *Rules, Wyoming Department of Revenue, Chapter 9 § 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).

32. 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).

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 applicable in this appeal.

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

Section 6. Appraisal Methods.

The appraisal techniques which may be used by the County Assessor or the Ad Valorem Tax Division under written agreement with a county include the approaches described in this section. Each approach used shall be an appropriate method for the type of property being valued; that is, the property shall fit the assumptions inherent in the appraisal method in order to calculate or estimate the fair value of the property. Each approach used shall also consider the nature of the property or industry, and the regulatory and economic environment within which the property operates. For personal property, the valuation methodology selected shall reflect the trade level at which personal property is found, and shall account for factors influencing the value in place including utility, usefulness to the owner or the actual income produced.

(a.) The Sales Comparison Approach. The comparable sales approach is an appropriate method of valuation when there is an adequate number of reliable arms-length sales and the properties subject to such sales are similar to the property being valued. Comparable sales shall be adjusted to reflect differences in time, location, size, physical attributes, financing terms or other differences which affect value. The use of this approach to value depends upon:

- (i.) The availability of comparable sales data;
- (ii.) The verification of the sales data;
- (iii.) The degree of comparability or extent of adjustment necessary for time differences; and
- (iv.) The absence of non-typical conditions affecting the sales price.

(b.) The Cost Approach. The cost approach is a method of estimating value by summing the land value, where applicable, with the depreciated value of improvements. The approach may also be used to establish value for

personal property through the process of cost estimation. The cost approach relies on the principle of substitution in which an informed buyer will not pay more for a property than its comparable replacement. The approach requires:

(i.) Accurate, current land values in the case of real property;

(ii.) Accurate, pertinent physical data regarding the property to which cost data maybe applied;

(iii.) Current cost data which considers appreciation in the case of real and personal property;

(A.) Costs maybe estimated on the basis of typical reproduction or replacement costs.

(B.) Typical reproduction and replacement costs may be estimated by the quantity survey method, the unit-in-place method, the comparative unit method, or the trended original cost method.

(C.) The appraiser may use cost manuals where available or may design his own. Such manuals shall be based on actual costs and shall indicate which indirect costs are included. Such manuals shall also provide normal depreciation and age-life information.

(iv.) Depreciation in the case of real and personal property. For personal property:

(A.) The Ad Valorem Tax Division shall provide tables of depreciation factors for use by property tax appraisers. Other rates of depreciation may be developed by the appraiser.

(B.) The Ad Valorem Tax Division shall develop economic life tables based on information from such sources as, but not limited to, the Internal Revenue Service publications 534 and 946 as well as Marshall Valuation Service and recommendations from the Wyoming County Assessors Association.

(C.) Depreciation shall be applied beginning at the first assessment date after the property is acquired.

(D.) Depreciation shall continue to be applied until the residual value is reached. The residual value shall be considered to be no less than 20% for all personal property, unless the property tax appraiser has collected sufficient market information to indicate a different residual value.

(v.) For purposes of this section, the following definitions apply:

(A.) "Appreciation" means an increase in value due to an increase in cost to reproduce, value over the cost, or value at some specified earlier point in time, brought about by greater demand, improved economic conditions, increasing price levels, reversal of depreciating environmental trends, or other factors as defined in the market.

(B.) "Cost" consists of all components of expense incurred in the building or manufacture of real and personal property.

(1.) "Direct costs" include, but are not limited to, materials, labor, supervision, equipment rentals, installation of components, and utilities.

(2.) "Indirect costs" include, but are not limited to, architecture and engineering, building permits, title and legal expenses, insurance, interest and fees on construction loans, taxes incurred during construction, advertising and sales expenses, and reasonable overhead and profit.

(C.) "Comparative unit method" means the procedure for estimating cost in which all direct and indirect costs are summed and divided by an appropriate unit such as square feet of ground area or floor area, or cubic feet, to derive a cost per unit according to the quality and type of construction. The method is generally used to estimate replacement cost and is not considered to be as accurate as the quantity survey and unit-in-place methods.

(D.) "Depreciation" means a loss of utility and hence value from any cause. Depreciation may take the form of physical depreciation, functional obsolescence, or economic obsolescence.

(1.) "Physical Depreciation" means the physical deterioration as evidenced by wear and tear, decay or depletion of the property.

(2.) "Functional Obsolescence" means the impairment of functional capacity or efficiency, which reflects a loss in value brought about by such factors as defects, deficiencies, or super adequacies, which affect the property item itself or its relation with other items comprising a larger property.

(3.) "Economic Obsolescence" means impairment of desirability or useful life arising from factors external to the property, such as economic forces or environmental changes which affect supply-demand relationships in the market. The methods to measure economic obsolescence may include, but are not limited to:

a. Capitalization of the income or rent loss attributable to the negative influence;

b. Comparison of sales of similar properties which are subject to the negative influence with others which are not.

c. Identification of factors specifically analogous to the property, i.e. Investments, capacities, and/or industry relationships.

(E.) "Quantity survey method" means the procedure for estimating cost which requires complete itemization of all construction, labor, and material costs, by components and subcomponents, and of all indirect costs. The method is most often used to derive a reproduction cost for a specific property or special-purpose property for which other methods may not be sufficiently accurate.

(F.) "Replacement cost" means the cost of constructing a substitute structure of equal utility using current materials, design, and standards.

(G.) "Reproduction cost" means the cost of constructing a replica, or identical structure or item of property using the same materials, construction standards, design and quality of workmanship, embodying all the deficiencies, super-adequacies and obsolescence of the subject property.

(H.) "Trended original cost method" means the procedure for estimating replacement cost of property by trending its original, or

historical cost with a factor from an appropriate construction cost index. Subsequent additions and replacements less deductions or removals must be considered. The method is used to appraise property for which comparable cost data are not available. For personal property, acquisition or original costs shall be trended to reflect current replacement costs by application of a cost trend factor developed annually by the Ad Valorem Tax Division. The result is replacement cost new, or ren. Trending of acquisition or original costs shall cease when the residual value has been reached except when refurbishing or maintenance changes the effective age.

(I.) "Unit-in-place method" means the procedure for estimating cost which combines direct and indirect costs into a single unit-in-place, which, when multiplied by the area of the portion of the building being priced, results in a total cost estimate for that portion.

* * *

(d.) Computer Assisted Mass Appraisal (CAMA). The following CAMA systems are the only automated systems adopted and approved to value taxable property assessed at the local level for ad valorem tax purposes:

(i.) Until January 1, 2007, the State CAMA mainframe systems known as the Cole-Layer-Trumble (CLT) system, and the Wyoming System(WYS), as maintained by the State Ad Valorem Tax Division or the department provided Colorado Customer Ware, Inc., RealWare "CCI" system for all real and personal property except property for which narrative appraisals or other recognized approaches to value are used as a substitute to the CAMA system. For these properties, the assessor shall maintain a name and address file along with a legal description including the final value of land and buildings as described in the narrative appraisal within the county system which tabulates the final total value of the affected county.

(ii.) After January 1, 2007, the Colorado Customer Ware, Inc., RealWare "CCI" system for all real and personal property, except property for which narrative appraisals or other recognized supplemental appraisals are used as a substitute to the CAMA system. For these properties, the assessor shall maintain a name and address file in the "CCI" system, along with a legal description and the final value of land and buildings as described in the narrative or supplemental appraisal.

(iii.) Any county system approved by Department order following submission by the county of documentation sufficient to find the

system comparable to the State system(s) specifically approved in this subsection. For comparability, the following shall be considered:

(A.) whether the county system, or the county system in combination with a manual system or the approved State system, values the same universe of properties as valued by the approved State systems(s);

(B.) whether the county system will have identical trending tables for property types as present in the State system;

(C.) whether the county system will have tables comparable to those in the approved State system to determine depreciation affecting property;

(D.) for the agricultural land valuation system, whether the county system will have the same value tables for the productivity groups within land use types of agricultural land as present in the approved State system(s);

(E.) whether the county system has identical functionality relevant for valuation processing; and

(F.) whether it is reasonable to expect the county system to generate a defensible value.

(iv.) Prior to any decision on an alternate system, after meeting with the County Assessor requesting use of an alternate system, written recommendations shall be obtained from the administrator of the Ad Valorem Tax Division, with a copy made available to the county in question. The county Assessor shall have the right to comment and meet with the Department, if requested, on the draft proposed Department order approving or disapproving a county system in whole or in part, which proposed order shall include findings of fact and conclusions of law. All costs associated with any alternate system shall be the sole responsibility of the county, including, but not limited to, hardware, software, maintenance, and system training.

(v.) Alternate county systems shall be approved by order of the Department. Use of an unapproved county system shall negate the presumption of validity afforded a County Assessor value estimate.

Rules, Wyoming Department of Revenue, Chapter 9 § 6 (a), (b), (d).

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

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

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

35. An assessor’s valuation is presumed valid, accurate, and correct. This presumption survives until overturned by credible evidence. *Britt v. Fremont County Assessor*, 2006 WY 10, ¶ 23, 126 P.3d 117, 125 (Wyo. 2006); *Thunder Basin Coal Company v. Campbell County, Wyoming Assessor*, 2006 WY 44, ¶ 13, 132 P.3d 801, 806 (Wyo. 2006); *Teton Valley Ranch v. State Board of Equalization*, 735 P.2d 107, 113 (Wyo. 1987). A mere difference of opinion as to value is not sufficient to overcome the presumption. *J. Ray McDermott & Co. v. Hudson*, 370 P.2d 364, 370 (Wyo. 1962); *Thunder Basin Coal Company v. Campbell County, Wyoming Assessor*, 2006 WY 44, ¶¶ 13, 48, 132 P.3d 801, 806, 816 (Wyo. 2006). The presumption is especially valid where the Assessor valued the property according to the Department’s Rules and Regulations which provide for the use of the CAMA system in the assessment of real property. *Rules, Wyoming Department of Revenue, Chapter 9 § 7*. “The burden is on the taxpayer to establish any overvaluation.” *Hillard v. Big Horn Coal Co.*, 549 P.2d 293, 294 (Wyo. 1976).

36. 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.

37. The Wyoming Supreme Court has recognized the validity of valuations derived from the CAMA system. *Gray v. Wyoming State Board of Equalization*, 896 P.2d 1347 (Wyo. 1995), *Britt v. Fremont County Assessor*, 2006 WY 10, ¶ 17, 126 P.3d 117, 123 (Wyo. 2006). In fact, the Wyoming Supreme Court rejected the use of actual sales price for properties in favor of the value established by the CAMA system because of the equality and uniformity which result from its use. *Gray, supra*, at 1351.

38. Our evaluation of this appeal turns, at least in part, on the question of whether there is substantial evidence in the record which reasonably supports the County Board decision. In determining whether the required substantial evidence is present, the State Board will not substitute its judgement for findings reasonably supported by evidence in the County Board record. *Laramie County Board of Equalization v. State Board of Equalization*, 915 P.2d 1184, 1188-1189 (Wyo. 1996); *Holly Sugar Corp. v. Wyoming State Board of Equalization*, 839 P.2d 959 (Wyo. 1992); *Sage Club, Inc. v. Employment Sec. Comm’n.*, 601 P.2d 1306, 1310 (Wyo. 1979). While substantial evidence may be less than the weight of the evidence, it cannot be clearly contrary to the overwhelming weight of the evidence. The Wyoming Supreme Court has stated “[s]ubstantial evidence is a term of art best described as relevant evidence that a reasonable mind can accept as adequate support for an agency’s conclusion.” *Sidwell v. State Workers’ Compensation Div.*, 977 P.2d 60, 63 (Wyo. 1999). *See also, Schouboe v. Wyoming Department of Transportation*, 2010 WY 119, ¶ 12, 238 P.3d 1246, 1249 (Wyo. 2010).

Discussion

39. The State Board previously considered a challenge by Taxpayer to the 2008 valuation of the property which is the subject of this appeal. *Wirth Revocable Trust*, Docket No. 2008-

95, March 18, 2009, 2009 WL 797879, (Wyo. St. Bd. Eq.). Taxpayer, in the 2008 appeal, argued the number of sales relied upon by the Assessor to determine a market adjustment factor was insufficient in light of IAAO Standards. *Wirth Revocable Trust*, Docket No. 2008-95, March 18, 2009, 2009 WL 797879, ¶ 52 (Wyo. St. Bd. Eq.). The State Board, in its decision concerning the 2008 valuation of Taxpayer's property, reiterated its position the IAAO Standards were not, under the Department Rules, binding on a Wyoming assessor. *Id.*

40. The within appeal presents a factual situation which is basically the reverse of what was presented to the County Board and the State Board in the 2008 appeal. It is now the Assessor who, in the current appeal, is relying on the IAAO Standards to support the market adjustment factor utilized in calculating the 2009 valuation of Taxpayer's property. *Supra*, ¶¶ 12, 13, 14, 15.

41. The Assessor asserts Section 6.4 of the IAAO Standards on Ratio Studies allows the use of valid prior years sales. In this matter, the valid sales in 2006 and 2007 in LEA 430R were used in conjunction with the one valid 2008 sale in that LEA to determine a market adjustment factor for 2009 since the single valid 2008 sale was not sufficient to perform a statistically valid sales ratio analysis. *Supra*, ¶¶ 12, 13, 14, 15, 16.

42. The IAAO Standard on Ratio Studies, Section 6.4, states that if a ratio sample size is inadequate to produce a reliable statistical measure, four alternatives should be considered. They are listed as: Restratification; Extend the period from which sales are drawn; Enlarge sample by validating previously rejected sales; and Impute appraisal performance. [County Board Record, p. 49(duplex)].

43. The Assessor, faced with only one valid sale in 2008, the usual time frame from which to draw sales for a ratio analysis for 2009, choose the IAAO remedy of using prior years sales:

2. Extending the period from which sales are drawn. This is often the most practical and effective approach. Sales from prior years can be used; however, adjusting the sale price for time may be necessary and significant property characteristics must not change.

IAAO Standards on Ratio Studies, Section 6.4, p. 15. [County Board Record, p. 49]. (Emphasis in original). *Supra*, ¶¶ 12, 13, 14, 15.

44. The Assessor, in reliance on Section 6.4, expanded the period from which to draw sales from one year, 2008, to three years, 2006, 2007, and 2008. *Supra*, ¶¶ 12, 13, 14, 15, 16; [County Board Record, Exhibit U, p. 262].

45. The Assessor did not, however, adjust the prior years sales prices for time which Section 6.4 indicated might be necessary. The only stated reason for the lack of adjustment was a conclusion that, in her discretion, a trending or adjusting of the sales prices was not necessary. There was no further evidence or testimony presented to the County Board to support this “discretionary” decision not to trend or adjust sales prices. *Supra*, ¶¶ 14, 15, 18, 43.

46. While the State Board has previously concluded, under then applicable Department Rules, IAAO Standards were not binding on Wyoming assessors, *Supra*, ¶ 39, should an assessor choose to rely on those Standards as justification for a fair market value determination, then it is only reasonable to expect the assessor to fully comply with the Standards, or present sufficient evidence why full compliance was not necessary or required. It is our conclusion the Assessor in this appeal failed to justify at the County Board hearing the decision not to fully comply with the IAAO Standard on Ratio Studies Section 6.4 by adjusting the prior years sales prices for time. *Supra*, ¶ 43.

47. The Assessor, when asked why the prior years sales were not time trended or time adjusted, simply indicated she had determined, in her “discretion,” the 2006 and 2007 sales did not need to be adjusted for time as recommended by Section 6.4 of the IAAO Standards on Ratio Studies. She offered no details as to how she reached her discretionary conclusion. *Supra*, ¶¶ 14, 15, 16, 18. While it has been recognized the valuation of property does inevitably involve a degree of discretion, *Supra*, ¶34, more than a singular discretionary decision without any explanatory detail for that decision was necessary to justify the failure to fully adhere to a recognized valuation standard, particularly when the standard is being relied upon by an assessor to justify a valuation decision.

48. There appears to have been some discussion during the County Board hearing that time trending or time adjustments of prior years sales prices was not referred to in the Department Rules applicable to the valuation of property in 2009. We would simply point out section 6(a) of Chapter 9 of the Department Rules on the Sales Comparison Approach in effect for 2009 valuation did indicate “[c]omparable sales shall be adjusted to reflect differences in time which affect value.” *Supra*, ¶ 33.

49. We are mindful, in reaching a conclusion the Assessor did not sufficiently support her discretionary decision not to adjust or time trend the prior years sales, of the presumptive validity of an assessor’s valuation, and the fact such presumption survives until overturned by credible evidence. *Supra*, ¶¶ 35, 36, 37, 38. It is our conclusion, however, the testimony at the County Board hearing indicating the Assessor did not fully comply with an IAAO Standard on which she relied for justification of her 2009 value was sufficient credible

evidence to overcome that presumption. It then became the burden of the Assessor to go forward and defend her valuation decision by fully explaining why, in her discretion, time trending or adjusting for time the prior years sales was not necessary. The justification provided by the Assessor, basically Exhibit U [County Board Record, p. 262], was not sufficient to fulfill that burden, particularly in light of the evidence Ms. Berg, who collaborated with the Assessor on the final value determination, testified she did not know how to do a trending analysis in 2009. *Supra*, ¶¶ 6, 14.

50. A possible factor contributing to the lack of evidence by the Assessor to justify not adjusting prior years sales was insufficient time to present her case at the County Board hearing. While neither the Assessor nor Taxpayer, through their respective counsel, offered any particularly strong objection to the amount of time allotted by the County Board hearing officer for Taxpayer's appeal, and neither party, at least as indicated by the County Board Record, requested additional time, it is clear from a review of the County Board hearing recording both the Assessor and Taxpayer seemed to be a bit "hurried" during their respective presentations. The participants in a county board hearing are entitled to a meaningful opportunity to be heard.

Parties to administrative proceedings are entitled to due process of law. *Pfeil v. Amax Coal West, Inc.*, 908 P.2d 956, 961 (Wyo.1995); *Amoco Production Company v. Wyoming State Board of Equalization*, 882 P.2d 866, 872 (Wyo.1994). "Procedural due process principles require reasonable notice and a meaningful opportunity to be heard before government action may substantially affect a significant property interest." *Pfeil*, 908 P.2d at 961; *see also Whiteman v. Wyoming Workers' Safety and Compensation Division, Department of Employment*, 984 P.2d 1079, 1083 (Wyo.1999).

The procedures outlined in the Wyoming Administrative Procedure Act are designed to provide parties in administrative proceedings with due process. *Roush v. Pari-Mutuel Commission of State of Wyoming*, 917 P.2d 1133, 1143 (Wyo.1996).

Amoco Production Company v. Wyoming State Board of Equalization, 7 P.3d 900, 905 (Wyo. 2000).

51. The County Board decision upholding the 2009 valuation of Taxpayer's property was not supported by substantial evidence. The only 2009 value which is supported by the County Board Record is the RCNLD plus land value for Taxpayer's property.

52. One of the issues identified by Taxpayer in his appeal to this Board raised the question of whether he was entitled to county-wide sales data which included information from statements of consideration. [*Opening Brief of Petitioner Wirth Revocable Trust*, p. 1]. Taxpayer had previously sought this data from the Assessor through a discovery request. When the Assessor refused to comply with the request, Taxpayer filed a Motion to Compel and for Continuance with the County Board, which was denied. [County Board Record, pp. 15-32]. Taxpayer then asked the Ninth Judicial District Court, Fremont County, to compel discovery. The resulting district court order determined Taxpayer was only entitled to the statements of consideration and syntax data which had been relied upon by the Assessor in determining the 2009 value of Taxpayer's property, citing the language of Wyo. Stat. Ann. § 34-1-142(g) in effect at the time of Taxpayer's appeal to the County Board in May, 2009. [County Board Record, pp. 33-37].

53. The question of whether Taxpayer was entitled to county-wide data when contesting his 2009 property valuation was decided by an order of the Fremont County District Court, and the State Board is not the forum in which to, in effect, attempt an appeal of that order. In addition, the question posed by Taxpayer is now basically moot in light of the fact the County Board Record on appeal can not be reopened, and the only 2009 value for Taxpayer's property which is supported by any evidence in the County Board Record is the RCNLD of the improvements plus the value of the land. *Supra*, ¶ 51.

54. It should be noted, however, Wyo. Stat. Ann. § 34-1-142(g) was amended effective March 3, 2010. *Session Laws of Wyoming, 2010, Chapter 20*, § 2. The language of the statute as amended now apparently authorizes a taxpayer to request the type of county-wide electronic data which Taxpayer herein had requested from the Assessor, even if such data includes information taken from statements of consideration, with appropriate confidentiality safeguards. *Wyo. Stat. Ann. § 34-1-142(e)*.

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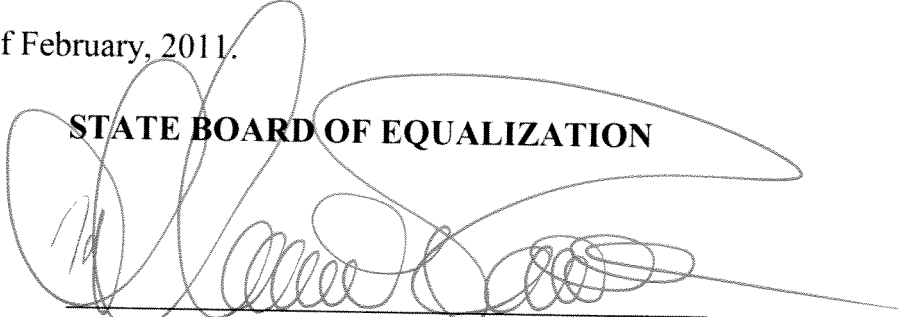
ORDER

IT IS THEREFORE HEREBY ORDERED the Decision of the Fremont County Board of Equalization, dated July 13, 2010, affirming the Assessor's 2009 valuation of Taxpayer's property is **reversed**.

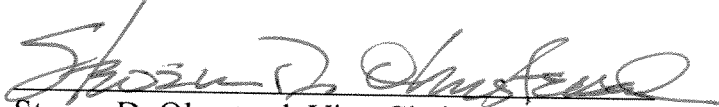
Pursuant to *Wyo. Stat. Ann. § 16-3-114* and *Rule 12, Wyoming Rules of Appellate Procedure*, any person aggrieved or adversely affected in fact by this decision may seek judicial review in the appropriate district court by filing a petition for review within 30 days of the date of this decision.

DATED this 24th day of February, 2011.

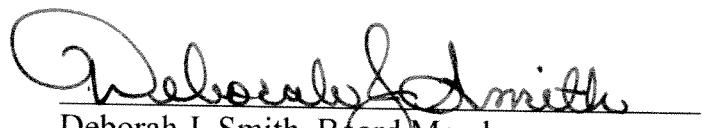
STATE BOARD OF EQUALIZATION



Thomas D. Roberts, Chairman

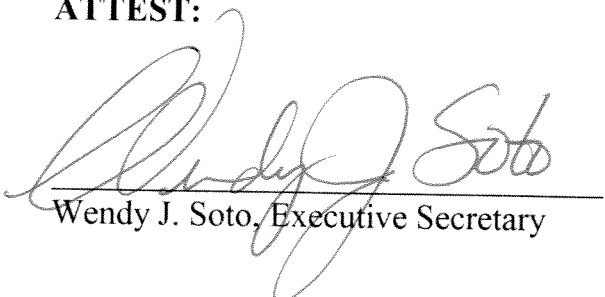


Steven D. Olmstead, Vice-Chairman



Deborah J. Smith, Board Member

ATTEST:



Wendy J. Soto, Executive Secretary


CERTIFICATE OF SERVICE

I hereby certify that on the 24th day of February, 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:

Philip A. Nicholas
Julie M. Wickett
Nicholas & Tangeman
170 North Fifth Street
Laramie WY 82070

Tara Berg
Fremont County Assessor
PO Box 2
Lander WY 82520

Jodi A Darrough
Deputy County Attorney
450 N Second St., Room 170
Lander WY 82520



Jana R. Fitzgerald
Executive Assistant
State Board of Equalization
P.O. Box 448
Cheyenne, WY 82003
Phone: (307) 777-6989
Fax: (307) 777-6363

cc: SBOE
Edmund J. Schmidt, Director, Department of Revenue
Marvin Applequist, Property Tax Division, Department of Revenue
Commission/Treasurer/Clerk - Fremont County
CCH
ABA State and Local Tax Reporter
State Library
File