

BEFORE THE STATE BOARD OF EQUALIZATION
FOR THE STATE OF WYOMING

IN THE MATTER OF THE APPEAL OF THE)
LARAMIE COUNTY ASSESSOR FROM)
A DECISION OF THE LARAMIE COUNTY) Docket No. **2010-123**
BOARD OF EQUALIZATION - 2010)
PROPERTY VALUATION)
(Cheyenne Ice & Events Center, LP))

DECISION AND ORDER

APPEARANCES

Mark T.Voss, Laramie County Attorney, for the Laramie County Assessor (Assessor),
Brenda Arnold.

Robert T. McCue, Speight, McCue & Crank, P.C., for the Cheyenne Ice and Events Center,
LP (Taxpayer).

DIGEST

The Assessor appeals the decision of the Laramie County Board of Equalization (County Board) reversing the Assessor's valuation of Taxpayer's properties for 2010 tax purposes and remanding the matter to the Assessor with instructions to revalue Taxpayer's properties, taking into account use restrictions placed on the properties by the properties' zoning designation.

The State Board, comprised of Chairman Steven D. Olmstead, Vice Chairman Deborah J. Smith, and Board Member Paul Thomas Glause¹ considered the County Board record, the

¹Paul Thomas Glause was appointed to the State Board by Governor Mead effective March 1, 2011, replacing Thomas D. Roberts.

decision of the County Board, the Assessor's Notice of Appeal, the Assessor's brief, the Taxpayer's brief, and the parties' oral arguments.

The State Board evaluates the Assessor'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.*

The State board affirms the decision of the Laramie County Board of Equalization.

PROCEEDINGS BEFORE THE COUNTY BOARD

The County Board conducted a hearing on June 17, 2010. [County Board Record, pp. 6, 10]. Jack R Spiker, former mayor of Cheyenne, Matthew J. Ashby, Cheyenne Planning Director, and Robert McCue, Taxpayer's managing partner, testified on behalf of the Taxpayer. The Assessor testified on her own behalf at the hearing. [County Board Record, pp. 7–90]. The County Board entered its Decision and Order on July 30, 2010, reversing the Assessor's valuation of Taxpayer's properties and remanding the matter to the Assessor with instructions to reduce the fair market value of Taxpayer's properties "to reflect the significant use restrictions placed on the property because of its zoning designation." [County Board Record, p. 425–434]. The decision was mailed to the Assessor and Taxpayer on August 2, 2010. [County Board Record, pp. 425–434].

JURISDICTION

The State Board is required to "hear appeals from county boards of equalization." *Wyo. Stat. Ann. § 39-11-102.1(c)*. On August 27, 2010, the Assessor filed a timely notice of appeal of the County Board decision with the State Board. *Rules, Wyoming State Board of Equalization, Chapter 3 § 2*. The Assessor and Taxpayer filed briefs as allowed by the October 29, 2010, State Board Briefing Order. The Assessor requested oral argument on November 3, 2010, which the State Board heard on January 31, 2011.

ISSUES

The Assessor identified the following issue on appeal:

Was the CBOE's (County Board) order, which required the Assessor to "reduce the fair market value of the subject property to reflect the significant use restrictions placed on the property because of its zoning designation", in accordance with law, arbitrary, capricious, an abuse of discretion, or supported by substantial evidence in the record?

[*Brief of Petitioner*, (Assessor), p. 4].

Taxpayer parsed Assessor's issue into its component parts:

1.) Was the CBOE's (County Board) Decision and Order, which required the Assessor to "reduce the fair market value of the subject property to reflect the significant use restrictions placed on the property because of its zoning designation" supported by substantial evidence in the record?

2.) Was the CBOE's (County Board) Decision and Order, which required the Assessor to "reduce the fair market value of the subject property to reflect the significant use restrictions placed on the property because of its zoning designation" in accordance with law?

3.) Was the CBOE's (County Board) Decision and order, which required the Assessor to "reduce the fair market value of the subject property to reflect the significant use restrictions placed on the property because of its zoning designation" arbitrary and capricious or and abuse of discretion?

and identified a fourth issue:

4.) Did Taxpayer present sufficient evidence to overcome the presumption of the validity of the Assessor's valuation?

[*Respondent Cheyenne Ice & Events Center, LLC's Response Brief*, (Taxpayer), p. 4].

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 a county board as the finder of fact. *Id.* In contrast, the State

Board acts as the finder of fact when it hears contested cases on appeal from final decisions of the Department of Revenue (Department). *Wyo. Stat. Ann. § 39-11-102.1(c)*. This sharp distinction in roles is reflected in the State Board Rules governing the two different types of proceedings. *Compare Rules, Wyoming State Board of Equalization, Chapter 2 with Rules, Wyoming State Board of Equalization, Chapter 3*. Statutory language first adopted in 1995, when the State Board and the Department were reorganized into separate entities, does not express the distinction between the State Board's appellate and *de novo* capacities with the same clarity as our long-standing Rules. *1995 Wyo. Sess. Laws, Chapter 209 § 1; Wyo. Stat. Ann. § 39-1-304(a), (currently Wyo. Stat. Ann. § 39-11-102.1(c))*.

The State Board standards for review of a county board decision are, by Rule, nearly identical to the Wyoming Administrative Procedure Act standards which a district court must apply to hold unlawful and set aside agency action, findings of fact, and conclusions of law. *Wyo. Stat. Ann. § 16-3-114(c)(ii)*. However, unlike a district court, the State Board will not rule on claims a county board has acted “[c]ontrary to constitutional right, power, privilege or immunity.” *Wyo. Stat. Ann. § 16-3-114(c)(ii)(B)*. The State Board's review is limited to a determination of whether a county board's 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, the State Board looks to precedent under Wyoming Statutes § 16-3-114(c) for guidance. For example, the State Board 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).

The State Board reviews 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).

The State Board also applies 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 BOARD²

1. The Assessor mailed Taxpayer 2010 Notices of Valuation for its properties on March 17, 2010. [County Board Record, pp. 127-131³].
2. Taxpayer appealed the Assessor's valuations of its properties to the County Board on April 15, 2010. [County Board Record, pp. 95–104].
3. The valuations appealed by Taxpayer relate to four properties acquired by the Taxpayer from the City of Cheyenne in December 2007, pursuant to a "Contract to Exchange Real Estate." Pursuant to the contract, Taxpayer transferred its business and real estate known as the Cheyenne Ice & Events Center (Taco John's Events Center) to the city of Cheyenne. In return, Taxpayer received four parcels of real estate owned by the city of Cheyenne. [County Board Record, pp. 21–22, 106–124, 136–137].
4. The four parcels received by Taxpayer in the exchange included:
 - a. A parcel of land situated on the northwest corner of Storey Boulevard and Merritt Road, consisting of 1.08 acres with an estimated appraised value of one hundred sixty-two thousand dollars (\$162,000) [County Board Record, Exhibit 1, p. 108];
 - b. A parcel of land situated on the northeast corner of Storey Boulevard and Merritt Road, consisting of 0.56 acres with an estimated appraised value of eighty-four thousand dollars (\$84,000) [County Board Record, Exhibit 1, p. 108];
 - c. A parcel of land situated on the east side of Converse Avenue just south of Storey Boulevard, consisting of 7.669 acres with an estimated appraised value of two million, fifty-five thousand dollars (\$2,055,000) [County Board Record, Exhibit 1, p. 106]; and
 - d. A parcel of land situated on the northwest corner of Storey Boulevard and Canyon Road, including portions of the Storey Boulevard and Blue Bluff Road rights-of-

²The County Board record certified to the State Board from the County Board contained numerous highlights and marks. It is not known whether the highlighting or markings were made during the hearing by a person handling the documents or after the hearing but before the record was transmitted to the State Board. Either way, the highlighting and marking of the original record is distracting, unnecessary and not appropriate.

³ County Board Record references are to the hand written page numbers at the bottom of each page of the record.

way, consisting of 4.48 acres with an estimated appraised value of seven hundred thirty thousand dollars (\$730,000). [County Board Record, Exhibit 1, pp. 106–107].

5. At the time of the transfer, the properties owned by the city of Cheyenne, *supra* ¶ 4, were zoned “P-public district,” which is “primarily for governmental buildings and uses where the activities conducted are directed to providing services to the public. It includes educational facilities and recreational areas.” Title 17, Municipal Code, Cheyenne, Wyoming § 17.80.010. [County Board Record, pp. 25–26, Exhibit A, p. 184].

6. Taxpayer called Jack R. Spiker, the mayor of the city of Cheyenne at the time of the parties’ negotiations, to testify regarding the negotiations for the property exchange. [County Board Record, pp. 21–41].

7. The negotiations with Taxpayer took place over a period of years, with the value of the properties involved in the exchange determined by appraisals. The city’s planning office determined the potential best uses for the city’s properties, and each parcel was appraised assuming potential zone changes. [County Board Record, pp. 21–22, 25].

8. Mr. Spiker provided a copy of and read from the Cheyenne City Council Minutes of December 20, 2007, when the final vote on the exchange occurred. The minutes reflect Mr. Collins, a city councilman, questioned the “P” zoning and stated that if Storey Boulevard-Converse Avenue were not going to be used as a park, the new owners would have to come before the governing body and request a zone change and possible replatting. [County Board Record, pp. 28–29, 31].

9. Mr. Spiker made it clear during his discussions with the city council that if the city were willing to trade the properties, the properties would need to be re-zoned because a “P” zone had no value to Taxpayer. [County Board Record, p. 31].

10. Mr. Spiker instructed the planning staff to work with the new owners of the properties to facilitate a zoning change upon the completion of the exchange. [County Board Record, pp. 33–34]. Mr. Spiker believed it was unfortunate the request for a zoning change did not come before the Cheyenne City Council. However, during the time of private negotiations and discussions, there were no commitments made by anyone on behalf of the city to grant a zoning change for the properties received by Taxpayer in the exchange. [County Board Record, pp. 28, 31, 34, 38–39].

11. The signers of the property exchange agreement understood the values for the city’s land were based on zoning being changed to something other than “P.” The values provided by the appraiser for each of the properties were based upon specific assumptions and all who

signed the contract accepted the appraised values based on those zoning assumptions. [County Board Record, pp. 29, 31, 35, 39, 198, 296, 357].

12. The properties have remained zoned “P,” which Mr. Spiker understood meant the properties were of little value unless Taxpayer wanted to build a park because the land could only be used for schools, parks, or recreation. [County Board Record, pp. 25–26, 31].

13. Mr. Spiker also testified regarding discussions between the parties following the rejection of the Taxpayer’s zoning change requests by the planning commission. The parties discussed the possibility of exchanging different properties, but no resolution occurred. Changes in the membership of the city council and the mayor affected those subsequent negotiations with Taxpayer. [County Board Record, pp. 26–27].

14. Matthew J. Ashby, Planning Services Director for the city of Cheyenne, testified concerning Cheyenne’s zoning process and the Taxpayer’s attempt to re-zone its properties in 2008. [County Board Record, pp. 41–53].

15. Mr. Ashby briefly described the process for requesting a zone change as follows:

Generally you would meet with city staff to discuss your proposal, the desired use of the property. There’s an application that needs to be filled out, a public notice requirement. Then it goes before the planning commission for a public hearing and a recommendation. And then from there it moves on to the City Council for final review and action.

[County Board Record, p. 44]. He thought the application fee for a zone change was somewhere between \$100 and \$200. There was also an advertising requirement. [County Board Record, pp. 44–45].

16. An action by the Planning Commission is a recommendation. If the Planning Commission recommends disapproval of a zoning change, the applicant may still bring the matter before the city council for consideration. [County Board Record, p. 45].

17. There may be agricultural zones available for Taxpayer’s properties. The city of Cheyenne provides a “RR” zone for Rural Residential with a one and one-half acre minimum size and an “AG” zone for an Agricultural district within the city limits with a 20 acre minimum property size. [County Board Record p, 42– 43, 189–196].

18. The testimony Mr. Ashby and the minutes of the August 4, 2008, Planning Commission meeting indicate the following occurred:

a. Item 4 on the Planning Commission agenda was Taxpayer's request to change the zoning of the land east of Converse Avenue and South of Storey Boulevard from P-Public to NB-Neighborhood Business, *supra* ¶ 4(c). After receiving a petition against the zone change and comments, the Planning Commission passed a motion, by a vote of 4 to 1, denying the zone change with a recommendation for the applicant to request a zone change for a residential zone. [County Board Record, pp. 46, 163–166].

b. Item 5 on the Planning Commission agenda was Taxpayer's request to change the zoning of the land north of and adjacent to Storey Boulevard, between Blue Bluff and Canyon Road from P-Public District to CB-Community Business District. The request covered the east portion of the land deeded to Taxpayer by the city of Cheyenne, *supra* ¶ 4(d). After receiving numerous comments against the proposed zone change, the Planning Commission passed a motion, by unanimous vote, denying the zone change. [County Board Record, pp. 46, 166–169].

c. Item 6 on the Planning Commission agenda was Taxpayer's request to change the zoning of the land at the northwest and northeast corners of the intersection of Storey Boulevard and Merritt Road from P-Public District to MUR-Mixed Use and Residential, *supra* ¶ 4(a) & 4(b). Taxpayer withdrew the request, and it was not considered by the Planning Commission. [County Board Record, pp. 48, 169].

d. Item 12 on the Planning Commission agenda was Taxpayer's request to replat the North Cheyenne Community Park, north of and adjacent to Storey Boulevard, east of and adjacent to Chief Washakie Avenue to account for the change in the layout of Storey Boulevard. The request covered a portion of the land deeded by the city of Cheyenne to Taxpayer, *supra* ¶ 4(d). The replat was proposed to consolidate those properties. After receiving comments, the Planning Commission passed a motion denying the replat. [County Board Record, pp. 47–48, 173–176].

e. Item 18 on the Planning Commission agenda was Taxpayer's request to replat a portion of the Storey Boulevard extension, located at the northwest and northeast corners of the intersection of Storey Boulevard and Merritt Road. *Supra* ¶ 4(a) & 4(b). The proposed replat of the property alongside Merritt combined the two parcels into one parcel and relocated the road. Taxpayer withdrew the request, and it was not considered by the Planning Commission. [County Board Record, pp. 47, 182].

19. Mr. Ashby stated a variety of other zoning districts were available, with different uses that would not have the same impacts as a commercial zone, such as traffic and noise affecting neighboring properties. [County Board Record, p. 49].

20. No further applications for zone changes or replatting of the properties owned by Taxpayer occurred after the initial applications. There was nothing to prevent a landowner from going through the zoning process again. [County Board Record, pp. 46–48, 51].

21. Mr. McCue testified on behalf of Taxpayer at the request of the County Board. He was a minority investor in Taxpayer and its general manager. [County Board Record, pp. 54, 95, 97, 99, 101].

22. There was no provision for zoning changes in the exchange contract between the Taxpayer and the city of Cheyenne. It was assumed, however, a zone change would occur after the exchange. [County Board Record, p. 55].

23. Taxpayer paid its consultant \$12,000 in its attempt to get the zoning changed for its parcels. [County Board Record, p. 58].

24. After consultation with its consultant, the city planning department and members of the city government, Taxpayer decided not to pursue the zoning change to avoid the opposition encountered the first time it sought to rezone the properties. Mr. McCue characterized the opposition as a “firestorm.” Taxpayer, instead, entered into discussions with the city to identify different city property available for exchange. Those discussions, however, did not lead to another exchange. [County Board Record, pp. 55–56, 60–62].

25. Brenda Arnold, Laramie County Assessor, testified concerning her valuation of Taxpayer’s properties for tax purposes. [County Board Record, pp. 62–86].

26. Ms. Arnold has been a certified Wyoming tax appraiser since 1989. She is accredited by the International Association of Assessing Officers. [County Board Record, p. 63].

27. Ms. Arnold characterized Wyoming as a tier taxation state with four property categories: industrial, commercial, residential, or agricultural. [County Board Record, p. 64].

28. The assessment notices mailed by the Assessor to Taxpayer on March 17, 2010, reflected the Assessor’s fair market value determination for the properties. The parcels were each valued as commercial, with a combined value of \$2,099,629. [County Board Record, pp. 65, 127–131].

a. The parcel of land situated on the northwest corner of Storey Boulevard and Merritt Road, *supra* ¶ 4(a), consisting of 1.08 acres was valued for tax purposes at \$245,220, with 2010 taxes estimated at \$1,654. [County Board Record, p. 129].

b. The parcel of land situated on the northeast corner of Storey Boulevard and Merritt Road, *supra* ¶ 4(b), consisting of 0.56 acres, or 24,393.6 square feet, was valued for tax purposes at \$146,063, with 2010 taxes estimated at \$985. [County Board Record, p. 130].

c. The parcel of land on the east side of Converse Avenue just south of Storey Boulevard, *supra* ¶ 4(c), consisting of 7.669 acres was valued by the Assessor for tax purposes at \$1,309,505, with 2010 taxes estimated at \$8,833. [County Board Record, p. 128].

d. The parcel of land on the northwest corner of Storey Boulevard and Canyon Road, including portions of the Storey Boulevard and Blue Bluff Road rights-of-way, consisting of 4.48 acres, *supra* 4(d), was assessed as two parcels. The Assessor did not include the lands dedicated as right-of-ways dedicated to public use, reducing the total land area of this parcel from 4.48 acres to 1.54 acres. [County Board Record, pp. 67–69, 133–134]. The portion of North Cheyenne Community Park, Lot 1, Block 2, containing 1.32 acres, was valued for tax purposes at \$271,044, with 2010 taxes estimated at \$1,828. [County Board Record, p. 127]. The portion of North Cheyenne Community Park, Lot 1, Block 3, containing 9,599 square feet, was valued for tax purposes at \$127,797, with 2010 taxes estimated at \$862. [County Board Record, p. 131].

29. In determining the value of Taxpayer’s properties, Ms. Arnold first determined the highest and best use for each property based on all the information available to her office as of January 1, 2010, the appraisal date. She classified the parcels for 2010 tax purposes as commercial, the same classification assigned to the properties by the Assessor since the Taxpayer acquired the properties in 2008. [County Board Record, pp. 69–71, 76].

30. Taxpayer’s properties were assigned to Land Economic Area (LEA) 2000 and 1000-2A . The 2010 Laramie County Narrative described an LEA as a geographic area that, within its boundaries, is more or less equally subject to a set of one or more economic forces that largely determine the value of lands within its area. The Narrative indicated the Assessor valued Taxpayer’s parcels using a linear regression land model. For three of the four parcels, *supra* ¶¶ 4(a), 4(b) and 4(c), the value was set at a base value of \$5,800, plus \$5.75 per square foot. For the fourth parcel, *supra* ¶ 4(d), the value was set at a base value of \$99,000, plus \$3.00 per square foot. [County Board Record, p. 135].

31. LEA 2000 contained 182 properties and LEA 1000-2A contained 44 properties. The Assessor used the allocation method of approved sales and a review of available vacant land sales to value Taxpayer’s parcels. The sales the Assessor reviewed were not included as evidence because the Assessor did not believe either the fair market value or the method of appraisal were at issue. [County Board Record, pp. 76–77].

32. The Laramie County Narrative indicated an individual property value may be adjusted by the Assessor.

In some cases a parcel will include an attribute adjustment for, but not limited to, the following situations: 1) Site is not buildable. 2) Site has restricted use (open space design). 3) Site is without infrastructure (streets, electricity, gas, water, etc.). 4) Site has a special circumstance that affects its market value.

[County Board Record, p. 135].

33. Ms. Arnold did not consider the city of Cheyenne's commercial zoning types of importance in her appraisal of property. She valued Taxpayer's properties using the same methodology used for the other commercial properties within the zoned area. In appraising properties in Laramie County, the Assessor considers the actual use of the property at the time of appraisal. [County Board Record, pp. 69-70, 79-80]

34. Ms. Arnold believed the appraisals obtained by the city of Cheyenne in anticipation of the property exchange supported her valuations. She did not, however, review the appraisals until after the Taxpayer's appeals were filed. [County Board Record, pp. 70-76].

35. Ms. Arnold compared her values with the values determined by the appraiser using the zoning assumptions requested by the city of Cheyenne and concluded her commercial values were in line with the values reflected in the appraisals. [County Board Record, pp. 70-76].

36. Each of the appraisals offered by the Assessor indicated they were prepared using possible, hypothetical zoning designations. [County Board Record, pp. 198, 204, 222, 225, 229, 240, 243, 246, 296, 301, 318, 326, 357, 362, 380]. Two appraisals indicated three of the parcels, *supra* ¶¶ 4(a), (b) and (c), were zoned A-1, the default designation, until the property was zoned with an appropriate urban zoning designation. [County Board Record, pp. 222, 225, 229, 357, 362, 380]. The appraisal of the fourth property, on the northwest corner of Storey Boulevard and Canyon Road, *supra* 4(d), was described in its appraisal as zoned Public and appraised assuming a hypothetical zoning change. [County Board Record, pp. 296, 301, 316].

37. Ms. Arnold discussed agricultural valuation and various city of Cheyenne zoning designations and gave her opinion that they were not applicable to Taxpayer's parcels. [County Board Record, pp. 64-65, 69-70, 72].

38. For agricultural valuation, land must be used primarily for a agricultural purpose, either grazing or cropland. The statutory requirements for agricultural valuation include: 1) The land must be producing to its capability to produce; 2) If it is owner operated, the owner must have income from agricultural sales of at least \$500; 3) If the property is leased, the lessee must have income from agricultural sales of \$1,000; and 4) The property cannot be in a platted subdivision. [County Board Record, p. 64]. *See Wyo. Stat. Ann. § 39-13-103(b)(x)*. Taxpayer's properties could not be valued as agricultural because the parcels were in platted subdivisions. [County Board Record, pp. 64–65].

39. It was Ms. Arnold's opinion Taxpayer's properties could not be considered zoned "P-public," based on her reading of the following city of Cheyenne zoning ordinance:

If any property designation p- public district on the city of Cheyenne of Laramie County Zoning maps is not owned by a governmental entity, it shall be conclusively presumed that the map is in error, absent any formal condemnation proceeding by a governmental entity.

Cheyenne, Wyoming Municipal Code, Chapter 17.08 § 17.08.060. [County Board Record, pp. 71–72, 193].

40. Ms. Arnold relied on the conclusive presumption in the ordinance as justification for assessing and appraising Taxpayer's properties as commercial. [County Board Record, pp. 71–72].

41. It was Ms. Arnold's position no adjustments were necessary for the valuation of Taxpayer's parcels because the "P" zoning was illegal and was not relevant for taxation purposes.

42. Ms. Arnold determined the highest and best use of Taxpayer's properties was commercial and appraised Taxpayer's parcels as commercial because they were not tax exempt and were no longer owned by a public entity. [County Board Record, pp. 81, 84].

43. Ms. Arnold has had no authority to exempt property and must presume Taxpayer's property was taxable unless there was a statute that would exempt a property. There were no statutes exempting property because of an illegal zoning designation. [County Board Record, p. 77].

44. Ms. Arnold was not aware of any other properties owned by a private party in Laramie County zoned "P." She did not track such information for property taxation purposes. [County Board Record, p, 84].

45. Ms. Arnold was unable to say what the correct zoning of Taxpayer's properties would be if they weren't zoned "P", and was not sure the properties could be used for commercial purposes. [County Board Record, pp. 81–82].

46. Three of Taxpayer's parcels were identified in the appraisals as zoned A-1. *Supra* ¶ 36. It was Ms. Arnold's opinion the properties could not be zoned A-1, agricultural and rural residential, because the zone was only available for properties in the county, not properties in the city. [County Board Record, p. 72].

47. It was Ms. Arnold's opinion the cost to cure the zoning would be \$100 to \$200 based on the testimony of Mr. Ashby, *supra* ¶ 15, but an adjustment to her valuation was not necessary.

48. Ms. Arnold did not make any land attribute adjustment based on the zoning. [County Board Record pp. 80–81]. The discounted present worth method of appraising commercial properties was not available for Taxpayer's parcels at this stage of development, because the lots were no being actively marketed. [County Board Record, p. 85].

49. When asked what the zoning of Taxpayer's parcels was, Ms. Arnold responded: "Good Question, But they can't be zoned P legally." [County Board Record, p. 81].

APPLICABLE LAW AND DISCUSSION OF ISSUES

Applicable Law

50. 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."

51. 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."

52. 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).

53. The Legislature has required all property in Wyoming to be valued annually at fair market value. *Wyo. Stat. Ann. § 39-13-103(b)(ii)*.

54. The statutory valuation date is January 1 of each year, and 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)*.

55. 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); See Rules, Wyoming Department of Revenue, Chapter 9 § 4(a)(xvi).

56. 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)*.

57. 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)*.

58. The Department has promulgated rules which establish appraisal techniques which may be used by an assessor. *Rules, Wyoming Department of Revenue, Chapter 9 § 5⁴*. These techniques include the Sales Comparison Approach, the Cost Approach, and the Income or Capitalized Earnings Approach. *Rules, Wyoming Department of Revenue, Chapter 9 § 5(a)(i)(ii)(iii)*. Administrative rules have the force and effect of law. *Wyo. Dep't of Revenue v. Union Pacific Railroad Co.*, 2003 WY 54, ¶ 18, 67 P.3d 1176, 1184 (Wyo. 2003); *Painter v. Abels*, 998 P.2d 931, 939 (Wyo. 2000).

59. Those rules provide definitions applicable to the local property valuation and assessment.

(a.) Section 4. Definitions. For the purpose of property taxation under these rules, the definitions set forth in Title 39, as amended: definitions as set forth by the International Association of Assessing Officers (IAAO) Standard on Mass Appraisal (2008), Standard on Automated Valuation Models (AVMs) (2003), Standard on Ratio Studies (part A) (2007), Standard on Property Tax Policy (2004), Standard on Valuation of Personal Property (2005) and Uniform Standards of Appraisal Practice (USPAP) Standard 6 (2008-2009) are incorporated herein by reference. In addition, the following definitions shall apply:

* * *

(xxii.) "IAAO": Refers to The International Association of Assessing Officers.

Rules, Wyoming Department of Revenue, Chapter 9 § 4(xxi) and (xxii).

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

Section 5. Appraisal Methods.

(a.) The appraisal techniques which may be used by the County Assessor include the approaches described in this section. Each approach used shall be an appropriate method or the type of property being valued; that is, the property shall fit the assumptions inherent in the appraisal method in order to calculate or estimate the fair market value of the property. **Each approach used shall also consider the nature of the property and the regulatory and economic environment within which the property operates.** All methods

⁴ The Department Rules, Chapter 9, were amended effective December 7, 2009.

used by the Assessor shall be consistent with the applicable IAAO and USPAP standards including, but not limited to, the following (except where standards conflict with Wyoming Statute or Rule): IAAO Standard on Mass Appraisal (2008), IAAO Standard on Automated Valuation Models (AVMs) (2003), IAAO Standard on Ratio Studies (part A) (2007), Uniform Standards of Professional Appraisal Practice (USPAP) Standard 6 (2008-2009), IAAO Standard on Property Tax Policy and IAAO Standard on Valuation of Personal Property (2004).

Rules, Wyoming Department of Revenue, Chapter 9 § 5(a.) (Emphasis added).

61. Chapter 9, Section 9 of the Department's Rules requires the Assessor to reconcile the value derived using the approaches to valuation:

(a.) The appraiser shall weigh the relative significance, applicability and appropriateness of the indications of value derived from the approaches to value or methods outlined above, and will place the most weight and reliance on the value indicator which, in his professional judgment, best approximates the value of the subject property. The appraiser shall evaluate all alternative conclusions and reconcile the value indicators to arrive at a final estimate of value. **For market value, the final estimate is that value which most nearly represents what the typical, informed, rational purchaser would pay for the subject property and a rational seller would accept if it were available for sale on the open market as of the date of the appraisal, given all the data utilized by appraisers in their analyses.**

Rules, Wyoming Department of Revenue, Chapter 9 § 9 (emphasis added).

62. Zoning has been described by the Wyoming Supreme Court as follows:

[¶8] Zoning is a planning tool that must be used in accordance with a comprehensive plan. Wyo. Stat. Ann. § 15-1-601(d)(I) (LexisNexis 2001); 1 Young, *supra*, § 1.13 at 19.

Comprehensive zoning consists of the division of the whole territory of a municipality into districts, and the imposition of restrictions upon the use of land in such districts. * * * [Zoning regulations] permit a municipality to apply constant and consistent pressure upon landowners to the end that land use will be guided by the community plan and the public interest.

1 Young, *supra*, § 1.13 at 20 (footnote omitted). Municipal zoning in Wyoming contemplates the division of a town into districts, with uniform regulations within each district. Wyo. Stat. Ann. § 15-1-601(b) and (c). We have described zoning as “the process that a community employs to legally control the use which may be made of property and the physical configuration of development upon the tracts of land located within its jurisdiction.” *Ford*, 924 P.2d at 94. Zoning ordinances may regulate both the nature of the land usage and the physical dimension of uses, including height, setbacks, and minimum areas. *Cheyenne Airport Bd. v. Rogers*, 707 P.2d 717, 726 (Wyo. 1985), *appeal dismissed*, 476 U.S. 1110, 106 S.Ct. 1961, 90 L.Ed.2d 647 (1986). The comprehensive plan is the policy statement; the zoning ordinances are what have the force and effect of law. *Ford*, 924 P.2d at 95.

Snake River Brewing v. Town of Jackson, 2002 WY 11, ¶¶ 8, 39 P.3d 397, 403 (Wyo. 2002).

63. Two provisions of the city of Cheyenne zoning ordinance discuss the effect of ownership of land zoned “P-public” by a private entity.

64. Section 17.80.010 provides in pertinent part:

This district [P–public district] is primarily for governmental buildings and uses where the activities conducted are directed to providing services to the public. It includes educational facilities and recreational areas. If the property or portion of the property with this classification are sold or transferred to a nongovernmental entity, the district classification shall be changed before the property can be utilized.

Municipal Code, Cheyenne, Wyoming, Chapter 17 § 17.80.010. [County Board Record, p. 194].

65. Section 17.08.060 provides:

If any property designated P-public district on the city of Cheyenne or Laramie County zoning maps is not owned by a governmental entity, it shall be conclusively presumed that the map is an error, absent any formal condemnation proceeding by a governmental entity.

Municipal Code, Cheyenne, Wyoming, Chapter 17 § 17.08.060. [County Board Record, p. 193].

66. “The same rules which govern the construction of statutes apply also to the construction of ordinances. *Town of Torrington v. Taylor*, 59 Wyo. 109, 137 P.2d 621 (1943).” *Huber v. City of Casper*, 727 P.2d 1002, 1004 (Wyo. 1986).

67. “[I]t is a fundamental rule of statutory interpretation that all portions of an act must be read in pari materia, and every word, clause, and sentence must be construed so that no part is inoperative or superfluous.” *Deloges [v. State ex rel. Wyo. Workers’ Compensation Division]*, 750 P.2d [1329], at 1331 (Wyo. 1988).” *State, ex rel. Wyo. Workers’ Safety and Compensation Division v. Singer*, 2011 WY 57, ¶ 12, 248 P.3d 1155, 1159 (Wyo. 2011).

68. “Highest and best use” is “[a] principle of appraisal and assessment requiring that each property be appraised as though it were being put to its most profitable use (highest possible present net worth), given probable legal, physical, and financial constraints. The principle entails first identifying the most appropriate market, and, second, the most profitable use within that market. The concept is most commonly discussed in connection with underutilized land.” Glossary for Property Appraisal and Assessment (International Association of Assessing Officers, 1997) p. 65. The Appraisal Institute defines “highest and best use” as “the reasonable probable and legal use of vacant land or an improved property, which is physically possible, appropriately supported, financially feasible, and that results in the highest use.” Appraisal Institute, *The Appraisal of Real Estate*, p. 275, (10th ed. 1992).

69. The application of “highest and best use” requires the appraiser to “determine which uses are legally permissible. ... Private restrictions, **zoning**, building codes, historic district controls, and environmental regulations must be investigated because they may preclude many potential used.” *Id.* at p. 280. (Emphasis added).

If there are no private restrictions, the property uses allowed by the zoning typically reflect the available choices in most highest and best use determinations. However, the possibility of a change in zoning should also be considered by the appraiser. If the highest and best use of the site or property is not allowed under current zoning, but there is a reasonable probability that a change in zoning could be obtained due to shifting economic and social patterns, these conditions can be considered in determining highest and best use. However, the appraiser must fully disclose all pertinent factors relating to a possible zoning change, including the time and expense involved and the risk that the change will not be granted.

Id. at p. 281. See *Basin Elec. Power Co-op., Inc. v. Department of Revenue, State of Wyo.*, 970 P.2d 841, 852–854 (Wyo. 1998).

70. The IAAO has identified four criteria which the “highest and best use” must meet.

Once the highest and best use has been determined, the use must meet the following four criteria:

1. physically possible
2. legally permissible
3. financially feasible
4. most productive

Typically, the criteria should be considered sequentially because it would not matter if the property met the financially feasible test if the size of the property was not appropriate, or the intended use legal.

* * *

The second criterion, legally permissible, requires the assessor to be completely familiar with zoning, city ordinances, and state and federal laws affecting use.

Property Assessment Valuation, p. 32. (International Association of Assessing Officers, (2nd ed. 1996),

71. The Wyoming Supreme Court discussed “highest and best use” in the context of the valuation of a non-profit utility.

The only citation to any legal authority in the Decision’s discussion of highest and best use is a footnote citation to a treatise, The Appraisal of Real Estate (10th ed. 1992). At page 275, the treatise defines “highest and best use” as “the reasonably probable and legal use of vacant land or an improved property, which is physically possible, appropriately supported, financially feasible, and that results in highest value.” The Appraisal Institute, The Appraisal of Real Estate 275 (10th ed. 1992). Conspicuously absent from the Decision is any reference to the Board’s rules, Wyoming statutes, or case law. The Decision fails to indicate any rule or statute directing the Department to value property at its highest and best use or, more importantly, what such a determination would entail. See *In the Matter of Bessemer Mountain, Rissler & McMurry v. Environmental Quality Council*, 856 P.2d 450, 454 (Wyo. 1993) (“[T]he administrative agency must invoke expertise to create standards, which will furnish notice to the public of how the decision may be reached. The creation of such standards serves to eliminate any need to develop

standards on a case by case basis, which is time-consuming; may lead to inconsistent results; and severely inhibits judicial review.”)

Of particular concern here is the absence of authority supporting the application of the highest and best use analysis to differentiate between non-profit and for-profit entities. In this case, the “use” of the property is as an electric utility. The entity’s financial and management structure is simply irrelevant to a “highest and best use” analysis.

The Board’s analysis then leaps from defining highest and best use as “the reasonably probable and legal use of vacant land or an improved property, which is physically possible, appropriately supported, financially feasible, and that results in highest value” to a “most profitable” analysis and concludes that Basin would be more profitable if it was a for-profit entity. However, the Board’s own definition of highest and best use contains absolutely no mention of “most profitable.” In fact, while “results in highest value” may relate to “most profitable,” the Board’s Decision is devoid of findings or analysis concerning the other factors found in the definition of highest and best use.

“[The] highest and best use is shaped by the competitive forces within the market where the property is located. Therefore, the analysis and interpretation of highest and best use is an economic study of market forces focused on the subject property.” [The] *Appraisal of Real Estate, supra*, at 275-76. Reviewing the Decision, we find no evidence that the Department or the Board undertook the necessary economic study of the market forces affecting Basin’s property. The purpose of Wyo. Stat. § 16-3-110 (1997) is “to require the articulation of basic facts from which ultimate findings of fact are determined in order to facilitate judicial review.” *Harris v. Wyo. Tax Comm’n*, 718 P.2d 49, 51 (Wyo. 1986).

Basin Elec. Power Co-op., Inc. v. Department of Revenue, State of Wyo., 970 P.2d 841, 853-854 (Wyo. 1998).

72. 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).

73. 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).

74. 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.

75. 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 *Schouboe v. Wyoming Department of Transportation*, 2010 WY 119, ¶ 12, 238 P.3d 1246, 1249 (Wyo. 2010).

76. The role of the County Board when reviewing an Assessor’s valuation is equivalent to the State Board role when it reviews a decision of the Department of Revenue.

It is only by either approving the determination of the Department [Assessor], or by disapproving the determination and remanding the matter to the Department [Assessor], that the issues brought before the [County] Board for review can be resolved successfully without invading the statutory prerogatives of the Department [Assessor].

Amoco Production Company v. Wyoming State Bd. of Equalization, 12 P.3d 668, 674 (Wyo. 2000).

Discussion

77. The source of this dispute is the zoning of the parcels Taxpayer received from the city of Cheyenne and its effect, if any, on the fair market values of those parcels for tax purposes.

78. The County Board found the zoning designation adversely affected the value of Taxpayer’s properties and remanded the matter for the Assessor take the zoning into

consideration in valuing Taxpayer's properties. [County Board Record, pp. 439–448]. The Assessor appealed the decision to the State Board.

79. There is no dispute that Taxpayer's properties were zoned "P-public" on the assessment date, January 1st, or that the zoning designation was not appropriate after Taxpayer acquired the properties from the city of Cheyenne. *Supra* ¶¶ 5, 11.

80. The Assessor argues the County Board erred in requiring her to take the erroneous zoning designation into consideration in valuing Taxpayer's properties because it would result in the grant of a governmental exemption to Taxpayer, an exemption not allowed by law. [*Brief of Petitioner*, (Assessor), pp.12–13. The Assessor relies on Section 17.08.060 of the Cheyenne municipal code which provides property designated "P-public" district on the city of Cheyenne zoning map, not owned by a governmental entity "shall be conclusively presumed" to be in error to support her position. *See* ¶¶ 39, 66, *supra*.

81. The Assessor is correct that Taxpayer is not entitled to a governmental exemption. Taxpayer is not a governmental entity, and Taxpayer's parcels are not being used by Taxpayer for a governmental purpose. *See* Wyo. Stat. Ann. § 39-11-105(a)(v); *Deromedi, Hot Springs County Assessor v. Town of Thermopolis*, 2002 WY 69, 45 P.3d 1150 (Wyo. 2002); *City of Cheyenne v. Board of County Commissioners of the County of Laramie*, 484 P.2d 706 (Wyo. 1971). However, that conclusion does not mean the Assessor may ignore the erroneous zoning in valuing Taxpayer's parcels.

82. Zoning limits the uses a landowner may make of its property to those permitted for the property's zone. *Supra* ¶ 65. The Assessor's characterization of Taxpayer's parcels as commercial is, therefore, speculative absent a zoning change.

83. All the Cheyenne ordinances bearing on Taxpayer's use of its parcels must be considered. *Supra* ¶¶ 66-67. In addition to the ordinance relied on by the Assessor providing that property zoned P-public is presumptively in error if the property is not owned by a governmental entity, Cheyenne's municipal ordinances require properties zoned "P-public", transferred by the city of Cheyenne to a private party, be re-zoned prior to development. *Supra* ¶¶ 64–65. Read *in pari materia*, Cheyenne's two ordinances recognize the incorrect zoning but restrict Taxpayer's use of the parcels until the incorrect zoning is changed. *Supra* ¶ 66–67. Development is not permitted until the zoning is changed. *Supra* ¶ 65.

84. The Assessor argues the application of the city of Cheyenne's conclusive presumption of error results in there being no restrictions on Taxpayer's use of its properties. [*Brief of Petitioner*, (Assessor), p. 13. Assessor offered no legal authority to support her conclusion and the State Board finds it without merit. As noted above, Cheyenne's zoning ordinances

clearly require a zoning change prior to development of the parcels by Taxpayer. *Supra* ¶¶ 65-68,

85. The Assessor's valuation is entitled to a presumption of validity, provided the applicable provisions of the Wyoming Constitution, Wyoming Statutes, and Department Rules and Regulations are complied with in valuing Taxpayer's properties. *Supra* ¶¶ 72-75.

86. Property in Wyoming is valued for tax purposes at "fair market value", a price agreed to between a "well informed" buyer and "well informed" seller. *Supra* ¶¶ 53, 55, 60. The Taxpayer and City of Cheyenne, as "well informed" buyer and seller, were aware of the zoning restrictions when they entered into their agreement. Certainly, the Taxpayer continued to be aware of the zoning restrictions and the opposition to the commercial zoning of its properties. *Supra* ¶¶ 8, 9, 22. It was reasonable for the County Board to infer a well informed buyer and seller would have such knowledge when it reviewed the Assessor's "fair market value" determination.

87. Because well informed parties would be aware of the zoning restrictions, the definition of fair market value required the Assessor to consider the current zoning of Taxpayer's properties when determining its fair market value.

88. Zoning laws prescribe the available uses for a property. *Supra* ¶ 62. It would be speculative to assume that any particular use would be authorized in advance of a zoning change or that a "well informed" buyer would be ignorant of a property's current zoning or not take it into account when considering a purchase price. *See: ENF Family Partnership v. Erie County Board of Assessment Appeals*, 861 A.2d 438 (Penn. 2004); *Porter v. Cuyahoga County Board of Equalization*, 50 Ohio St.2d 307, 364 N.E.2d 261 (Ohio, 1977); *Hedberg & Sons Co. v. County of Hennepin*, 305 Minn. 80, 232 N.W.2d 743 (Minn. 1975); *Kensington Hills Development Co. v. Milford Township*, 10 Mich. App. 368, 159 N.W.2d 330 (Mich.Ct.App. 1968). .

89. The Assessor testified she relied on the concept of "highest and best use" in categorizing Taxpayer's parcels as commercial. *Supra* ¶ 42. While the Wyoming Supreme Court was critical of the application of "highest and best use" in valuing a non-profit utility, *supra* ¶ 71, a determination of a property's "highest and best use" is nonetheless essential for determining a property's fair market value. *Supra* ¶ 68-71.

90. The application of "highest and best use" requires the consideration of the legal restrictions on the use of the property, including the zoning restrictions. *Supra* ¶¶ 69-70. It was inappropriate for the Assessor to fail to consider the zoning restrictions in valuing Taxpayer's properties.

91. An assessor must follow the Department's rules when assessing property. *Supra* ¶¶ 57-61. Those rules include a requirement that "[e]ach approach used shall also consider the nature of the property and the regulatory and economic environment within which the property operates." *Supra* ¶ 60. The Assessor failed to consider the use restrictions placed on the Taxpayer's properties because of its zoning restrictions, contrary to the Department's rules.

92. The Assessor argues Taxpayer failed to present evidence of an alternate value and, therefore, failed to meet its ultimate burden of proof. However, it is only by accepting the value of the assessor or by remanding the matter to the assessor that a County Board does its job without usurping the assessor's duty to value property. While the State Board has affirmed County Board decisions where an alternate value was presented by a taxpayer, the failure to provide an alternate value or to provide specific direction to the Assessor under the circumstances presented here is not required. *Supra* ¶ 76. *See In re John Wirth, Jr.*, Docket No. 2010-110, Feb. 24, 2011, 2011 WL 1351487 (Wyo. St. Bd. Eq.).

93. In those cases where it is shown an assessor has failed to value a Taxpayer's property according to recognized mass appraisal standards, it is appropriate to remand the matter for correction of the error by the Assessor. The failure of a Taxpayer to present an alternate value does not require a County Board to accept a value inappropriately determined by the Assessor. *Supra* ¶ 76.

94. The Assessor raised several claims related to the sufficiency of the evidence. This decision has generally addressed those claims as they related to the Assessor's legal assertions, except for the Assessor's claim Taxpayer's failure to present evidence of an attempt to develop or sell its parcels was fatal to its appeal. A review of the record discloses the opinion evidence of the former mayor of Cheyenne concerning the value of the parcels absent a zoning change and the testimony of Taxpayer's representative's as to the reasons Taxpayer did not go forward in the face of the opposition to the zoning change. *Supra* ¶¶ 9-12, 21-24. The State Board concludes this evidence was sufficient to support the County Board's conclusion that the zoning had a negative effect on the value of Taxpayer's parcels without evidence of development or marketing of the properties.

95. The evidence supports the County Board decision. Taxpayer's attempted zoning change was rejected by zoning commission. While it was possible for Taxpayer to continue the zoning change process, it cannot be assumed Taxpayer would have been successful in light of the evidence of opposition to the requested zoning change and the planning commission's actions presented to the County Board. *Supra* ¶ 24. The Assessor's

assumption that a zoning change would occur and the change would be to commercial was speculative in light of the evidence presented at the County board hearing.

96. While the Assessor argues the County Board erred in concluding the Taxpayer overcame the presumption in favor of the Assessors's valuation, [*Brief of Petitioner*, (Assessor), pp. 17–21], the evidence of the actual zoning restriction, and the Assessor's noncompliance with the relevant law and Department rules supports the County Board's conclusion that the presumption in favor of the Assessor's valuation was overcome. *Supra* ¶¶ 9-12, 21-24, 85-91.

97. The County Board record contains substantial evidence regarding the negative effects of the zoning restriction on the value of Taxpayer's properties. The Assessor's failure to take those restrictions into consideration supports the County Board decision reversing and remanding the Assessor's 2010 value for Taxpayer's parcels. The County Board did not act unlawfully, arbitrarily and capriciously, or abuse its discretion in reversing and remanding the Assessor's value for 2010 tax purposes.

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ORDER


IT IS THEREFORE HEREBY ORDERED the Laramie County Board of Equalization Order reversing and remanding the Assessor's 2010 valuation of Taxpayer's properties for revaluation, taking in to account the zoning restriction, is **affirmed**.

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

DATED this 10th day of August, 2011.

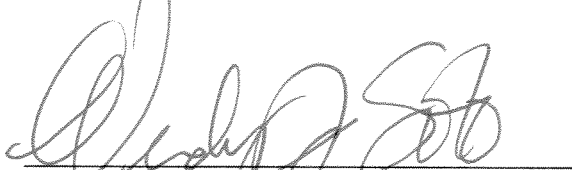
STATE BOARD OF EQUALIZATION


Steven D. Olmstead, Chairman


Deborah J. Smith, Vice-Chairman


Paul Thomas Glause, Board Member

ATTEST:


Wendy J. Soto, Executive Secretary

CERTIFICATE OF SERVICE

I hereby certify that on the 10th day of August, 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:

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State Library
File