

BEFORE THE STATE BOARD OF EQUALIZATION
FOR THE STATE OF WYOMING

IN THE MATTER OF THE APPEAL OF)	
MARILYN BEEMAN FROM)	
A DECISION OF THE LARAMIE COUNTY)	Docket No. 2010-124
BOARD OF EQUALIZATION - 2010)	
PROPERTY VALUATION)	

DECISION AND ORDER

APPEARANCES

Marilyn Beeman (Taxpayer) appeared pro se.

Sylvia Lee Hackl, Deputy Laramie County Attorney, appeared on behalf of the Laramie County Assessor (Assessor), Brenda Arnold.

DIGEST

Taxpayer appeals the Laramie County Board of Equalization (County Board) decision affirming the Assessor's valuation of Taxpayer's property for 2010 tax purposes. The Taxpayer's appeal was filed with the State Board of Equalization (State Board) August 27, 2010. The Taxpayer and Assessor filed briefs as allowed by the November 8, 2010, State Board Briefing Order. Neither party requested oral argument.

The State Board, Chairman Steven D. Olmstead, Vice Chairman Deborah J. Smith, and Board Member Paul Thomas Glause¹ considered the County Board record, decision of the County Board, Taxpayer's Notice of Appeal, Taxpayer's brief and Assessor's brief.

The State Board evaluates Taxpayer's appeal of the County Board decision against its standard of review, which is whether or not the decision was arbitrary, capricious,

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

unsupported by substantial evidence, and/or contrary to law. *Rules, Wyoming State Board of Equalization, Chapter 3 § 9.*

The Laramie County Board of Equalization decision is affirmed.

PROCEEDINGS BEFORE THE COUNTY BOARD

The County Board conducted a hearing on June 17, 2010. [County Board Record, pp. 2, 6]. Marilyn Beeman, the Taxpayer, and Brenda Arnold, the Assessor, each testified at the hearing. [County Board Record, pp. 4–36]. The County Board affirmed the Assessor's valuation of Taxpayer's property by a vote of two to one, with one County Board member, Gay Woodhouse, dissenting. [County Board Record, pp. 116–126]. The County Board decision was signed on July 30, 2010 and mailed to the parties on August 2, 2010. [County Board Record, pp. 126–127].

ISSUES

Taxpayer identified five issues:

1. Whether the [County Board] acted in an arbitrary and capricious manner by failing to address or rule on the issue before it, specifically an \$18,609 decrease in the Assessor's \$44,613 2010 value of the residential land for the property located at 4321 Superior Avenue, Cheyenne, WY.
2. Whether the [County Board] erroneously permitted and/or considered testimony not provided to the [County Board] or to [Taxpayer] prior to the hearing;
3. Whether the [County Board] acted in an arbitrary and capricious manner by failing to consider unresolved inconsistencies in the Assessor's determination of the residential land value as sufficient evidence to overcome the Assessor's presumption of correctness;
4. Whether the [County Board] acted in an arbitrary and capricious manner by failing to consider the sufficient, competent evidence [Taxpayer] presented with respect to the fair market value of the residential land; and

5. Whether the [County Board] indirectly affirmed the Assessor's fair value of the residential land without presentation of substantive evidence by the Assessor.

[*Taxpayer's Opening Statement*, p. 2 (emphasis omitted)].

In response, the Assessor argued the County Board "decision in this matter was in accordance with law and supported by substantial evidence on the record, and was neither arbitrary, capricious, nor an abuse of discretion." [*Brief of Respondent* (Assessor), p. 2].

STANDARD OF REVIEW

When the State Board hears appeals from county boards, 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.*

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 decision 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 section 16-3-114(c) for guidance. For example this substantial evidence standard must be applied:

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. Taxpayer owns residential property at 4321 Superior Avenue, Cheyenne, Laramie County, Wyoming, consisting of a 7742 square foot lot, a bi-level residence, two sheds and associated improvements. [County Board Record, p. 46].
2. An onsite inspection of Taxpayer's property was conducted by the Assessor's office in 2006, and the information gathered was used to value Taxpayer's property. For 2010 tax purposes, Taxpayer's real property and improvements were valued at \$151,959, \$44,613 for the lot and \$107,346 for the residence and other improvements. Assessor sent Taxpayer a 2010 Notice of Assessment on March 17, 2010. [County Board Record, pp. 21, 47].
3. Taxpayer requested a review of her property on March 29, 2010, which the Assessor's field department conducted on April 23, 2010. Based on the review, the Assessor reduced the quality of the basement finish, making it of less value than the upper floors. Additional concrete and a shed were discovered and added. As a result of the review, the fair market value for Taxpayer's property and improvements was reduced by the Assessor to \$151,474. Taxpayer's land value did not change as a result of the review. [County Board Record, pp. 20-22, 83, 85].

²The County Board record was extensively highlighted prior to its transmittal to the State Board. The highlighting of the transcript and exhibits is distracting, unnecessary and not appropriate.

4. Taxpayer filed an official appeal of the Assessor's 2010 valuation on April 5, 2010, requesting a reduction in her residential land value to \$26,004, and a total fair market value for her property and improvements of \$133,350 for 2010 tax purposes. [County Board Record, pp. 1, 42].
5. In 2009, the Assessor valued Taxpayer's residential lot at \$26,266 for tax purposes. In 2010, the Assessor valued Taxpayer's lot at \$44,613, a 70% increase in fair market value over 2009. [County Board Record, pp. 8, 43, 45–46]. The total fair market value for Taxpayer's real property and improvements increased from \$143,787 in 2009 to \$151,474 in 2010, a 5% increase over 2009. [County Board Record, pp. 45, 83, 85].
6. Using prior assessment schedules, Taxpayer provided an analysis of the relationship between the value of her lot to the total value of her property from 1999 through 2009. The analysis showed the lot value as a percentage of total property value ranged from 16.2% to 23.8%, with an average lot value of 17.6% of the total assessed value for those years. For 2010, the Assessor's value for Taxpayer's lot was 29.4% of the total fair market value of Taxpayer's real property and improvements. [County Board Record, pp. 8, 43–44].
7. Taxpayer requested information on the basis for the value of her lot from the Assessor, and was provided information concerning Neighborhood 1051, where her property is located. She learned there were no 2009 vacant land sales in Neighborhood 1051. [County Board Record, p. 9].
8. Taxpayer then asked for additional information from the Assessor on how the value of her lot was determined and was provided information concerning vacant and improved land sales for Neighborhood 1052. [County Board Record, p. 9, 49–52].
9. Using the information provided by the Assessor for Neighborhood 1052, Taxpayer calculated the average selling price of \$50,740 for the 30 vacant lots sold in Neighborhood 1052. [County Board Record, pp. 10–11, 48]. Taxpayer did not discern any relationship between the sales price and the size of a lot in Neighborhood 1052. [County Board Record, pp. 10, 48].
10. Taxpayer used the calculated average vacant lot sales price for Neighborhood 1052 to calculate the ratio of the average lot sales price to the total sales price of improved properties sold in Neighborhood 1052. Taxpayer arrived at an average ratio of land to total sales price of 19.43% for Neighborhood 1052. [County Board Record, pp. 11–12, 48–52].
11. Taxpayer used the calculated ratio, 19.5% (rounded by taxpayer) for land value and 80.5% for improvement value, to determine a value for her lot and improvements. In doing

the calculation, Taxpayer accepted the Assessor's original improvement value of \$107,346. By dividing the improvement value by 80.5% and then subtracting the improvement value, Taxpayer calculated a value of \$26,004 for her lot. She then added the calculated lot value and the Assessor's original improvement value of \$107,346 to arrive at a total value for her real property and improvements of \$133,350 (rounded by taxpayer). [County Board Record, pp. 11, 38, 42–43, 46].

12. To support her calculations, Taxpayer presented information obtained from real estate listings posted on the internet. Taxpayer presented listing information for five vacant residential lots in old neighborhoods in Cheyenne. The asking prices for the lots ranged from \$12,500 to \$25,000. Taxpayer acknowledged the Assessor could not use the information for valuation purposes, but argued they supported her calculated land value. [County Board Record, p. 11–12, 54–63].

13. Taxpayer also calculated a linear regression based on the sales of vacant land in neighborhood 1052 and disputed the calculation shown in the Laramie County Narrative. Taxpayer stated the sales in Neighborhood 1052 formula was “Y equals minus .075 X plus \$51,498 and not the formula shown in the Laramie County Narrative, [County Board Record, pp. 37, 82]. Taxpayer's calculation did not include values derived using the allocation or abstraction (called extraction in the transcript) methods described by the Assessor. [County Board Record, pp. 30–32].

14. Brenda Arnold, the Laramie County Assessor, testified concerning the valuation of Taxpayer's real property and improvements. She has been a certified Wyoming property tax appraiser since 1989. She is also accredited by the International Association of Assessing Officers. [County Board Record, pp.18–19].

15. The Assessor testified she followed Wyoming state law and the rules and regulations of the Department in assessing Taxpayer's property. [County Board Record, p. 19]. Taxpayer admitted she was not familiar with the statutes and rules and, therefore, did not have evidence to dispute the Assessor's statement. [County Board Record, p. 14].

16. The Assessor presented maps and information for properties that sold in 2009 in Neighborhood 1051, where Taxpayer's lot was located, and in Neighborhood 1052. The information included addresses, sales dates, legal descriptions, and sales amounts.

17. The Assessor also provided the Laramie County Narrative for Neighborhood 1051 and for Land Economic Area (LEA) 105 and 1051-001, where Taxpayer's property was located. The narrative provided a general explanation of the valuation of properties by the Assessor. [County Board Record, pp. 20–21, 80–82].

18. The Assessor described several approaches used in determining land values, including the comparable sales method (review of vacant land sales), the allocation method (allocate 20% of a property's sales price to the land value), and the abstraction (called extraction in the transcript) method (subtract the improvement replacement cost new less depreciation (RCNLD) from the sales price to determine a value for the land). [County Board Record, pp. 23–24, 31, 81].

19. Vacant land sales from Neighborhood 1052 were used by the Assessor in her analysis to value lots in the LEA where Taxpayer's property was located. [County Board Record, p. 24, 81].

20. "Once [the Assessor] looked at all those approaches, then [the Assessor's] trained certified appraiser has to determine what is the best fit." [County Board Record, pp. 24, 31].

21. Using a linear regression model, the Assessor determined land should be valued at \$33,000 per lot plus \$1.50 per square foot. The Assessor's value was then checked against the median value of sold vacant parcels and found to be within the State Board appraisal standards. [County Board Record 23–24, 31–32]. "The term 'linear' refers to the fact that we are fitting a line. The term model refers to the equation that summerize the line that we fit." [County Board Record, p. 82]. The actual calculations were included in the Assessor's exhibits or testimony.

22. The methodology used to value lots described by the Assessor in her testimony was different than the methodology described in the Laramie County Narrative, making it difficult for the Taxpayer to do a similar analysis. [County Board Record, pp. 23–24, 37, 81–82].

23. The Assessor explained how a market adjustment was calculated which was applied to all single family residential properties within the area where Taxpayer's home was located.

- a. The sales prices of properties in the area were compared to the replacement cost new less deprecation plus land value of the sold properties.
- b. The median ratio of replacement cost new less depreciation plus land to the sales price was 84.51%.
- c. A market adjustment was then calculated to bring the median into compliance with the State Board standard of .95 to 1.05. Rules, Wyoming State Board of

Equalization, Chapter 5 § 6. The calculated market adjustment, 1.20, was applied to all single family residential properties in the area. The adjusted value brought the median ratio of the statistical analysis to 96%.

[County Board Record, pp. 22–23, 31].

24. The Assessor provided the Laramie County Appraisal Report for Taxpayer's property. The report included the current land and improvement values. In addition, the appraisal report included a detailed description of the property data used to value the improvement in the Computer Assisted Mass Appraisal (CAMA) system. The Assessor also included a detailed sketch of the improvements, and all the cost elements used to value the improvement. [County Board Record, pp. 85, 88-97]. Taxpayer did not challenge the information used to value her improvements or their value.

25. The Assessor also provided sales information from three sales of comparable properties for informational purposes because "[t]he mass appraisal process does not allow for choosing 'comparables' which is the process most typical for fee appraisal." [County Board Record, pp. 85-106].

	Land Sq. ft.	Year Built	Property Type	Sq.Ft.	Assessor Value	Sales Price
Taxpayer	7,742	1975	bi level	864	\$151,474	
Property 1	7,742	1982	bi level	852	\$152,743	\$159,000
Property 2	5,999	1981	bi level	854	\$151,163	\$167,000
Property 3	7,200	1979	bi level	816	\$146,366	\$152,700

[County Board Record, pp. 98–106].

26. The Assessor explained the effect that acceptance of Taxpayer's suggested land value would have on the calculation of the market adjustment and provided a supporting exhibit. A reduction of lot values by \$18,000 would require a recalculation of the market adjustment applied to the properties in the area. A reduction in the value of the lots would necessitate an increase in the Market Adjustment from 1.20 to 1.40 in order for the values to meet the State Board's appraisal standards. [County Board Record, pp. 25–28, 35, 107].

APPLICABLE LAW

27. The State Board is required to “hear appeals from county boards of equalization.” *Wyo. Stat. Ann. § 39-11-102.1(c)*. Appeals are to be filed with the State Board within 30 days of the County Board decision. *Rules, Wyoming State Board of Equalization, Chapter 3 § 2*. On August 27, 2010, Taxpayer filed a timely appeal with the State Board of the County Board decision signed on July 30, 2010 and mailed to the parties on August 2, 2010.

28. The Wyoming Constitution provides “[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.” *Wyo. Const. art. 15 § 11(b)*.

29. The Wyoming Constitution also 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.” *Wyo. Const. Art. 15 § 11(d)*.

30. 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).

31. The Legislature defined full value as “fair market value” and required all property in Wyoming be valued annually at fair market value. *Wyo. Stat. Ann. § 39-13-103(b)(ii)*.

32. Fair market value is:

[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).

33. 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)*.

34. 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)*.

35. The Department has promulgated rules establishing the appraisal techniques which may be used by an assessor. *Rules, Wyoming Department of Revenue, Chapter 9 § 5*³. 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)*.

36. The Department’s rules define the cost approach as “a method of estimating value by summing the land value, where applicable, with the depreciated value of improvements.” *Rules, Wyoming Department of Revenue, Ch. 9 § 5(a)(ii)*.

37. The Department’s rules further provide:

For land valuation, the sales comparison is the preferred method of valuation. In the absence of adequate land sales, other techniques may be used including allocation, abstraction, anticipated use, capitalization of ground rents, and land residual capitalization.

38. 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 for the type of property being valued; that is, the

³ The Department Rules, Chapter 9, were amended effective February 23, 2011, after the assessment date for this matter. *Wyo. Stat. Ann § 39-13-103 (b)(i)(A)*.

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 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.).

39. Subsections 5(a)(i) and (ii) of the Department's rules describe the sales comparison and cost approaches:

(i.) The Sales Comparison Approach. The comparable sales approach is an appropriate method of valuation when there are an adequate number of reliable armslength sales and the properties subject to such sales are similar to the property being valued. For land valuation, the sales comparison is the preferred method of valuation. In the absence of adequate vacant land sales, other techniques may be used including allocation, abstraction, anticipated use, capitalization of grant rents and land residual capitalization. **For improved property, the sales comparison approach using market adjusted RCNLD plus land value or other market modeling techniques are the preferred method of valuation.** 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:

- (A.) The availability of comparable sales data;
- (B.) The verification of the sales data;
- (C.) The degree of comparability or extent of adjustment necessary for time differences; and
- (D.) The absence of non-typical conditions affecting the sales price.

(ii.) 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. In the CAMA system, RCNLD is calculated using Marshall and Swift cost tables. The cost approach is an accepted supplemental approach and could serve as the primary approach when sales data is unavailable or inadequate (such as special purpose properties). 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:

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

(B.) Accurate, pertinent physical data regarding the property to which cost data may be applied;

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

(1.) Costs may be estimated on the basis of typical replacement or reproduction costs.

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

Rules, Wyoming Department of Revenue, Ch. 9 § 5(a)(i) & (ii) (emphasis added).

40. The Department's Rules also provide for use of a [Computer Assisted Mass Appraisal] CAMA system by assessors for valuing real and personal property. *Rules, Wyoming Department of Revenue, Chapter 9 § 7.* The CAMA system "automates the comparable sales and replacement cost methods." *Britt v. Fremont County Assessor*, 2006 WY 10, ¶ 39, 126 P.3d 117, 128 (Wyo. 2006).

41. The Department's rules define "market adjustment."

(xxvi.) "Market Adjustment Factors (Neighborhood Adjustment Factor)": Market adjustment factors, reflecting supply and demand preferences, are often required to adjust values obtained from the cost approach to the market. These adjustments should be applied by type of property and area and are based on sales ratio studies or other market analyses. Accurate cost schedules,

condition ratings, and depreciation schedules will minimize the need for market adjustment factors.

Rules, Wyoming Department of Revenue, Ch. 9 § 4(a)(xxvi).

42. The Department's rules further provide the method an assessor is to use in calculating a market adjustment and require its use in valuing property.

(iv.) Calculating Market Adjustments. The Level of Assessment for any Neighborhood shall annually be calculated iteratively by varying the Market Adjustment Factor until the final desired Level of Assessment is achieved, using PASW software or other software approved by the Department. **One final Market Adjustment Factor shall be applied to the CAMA-generated RCNLD for each sold or unsold property in the Neighborhood unless justified and documented by the Assessor.**

Rules, Wyoming Department of Revenue, Ch. 9 § 6(iv)(emphasis added).

43. Chapter 9, section 9 of the Department's Rules requires the Assessor, using professional judgment, to reconcile the value derived using the recognized 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.

44. The Department's 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).

45. 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).

46. 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 burden is on the taxpayer to establish any overvaluation.” *Hillard v. Big Horn Coal Co.*, 549 P.2d 293, 294 (Wyo. 1976).

47. 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 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.

48. 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.

49. 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. Wyo. Dep't of Transportation*, 2010 WY 119, ¶ 12, 238 P.3d 1246, 1249 (Wyo. 2010).

ANALYSIS

50. Wyoming's Constitution and statutes require all property be valued at fair market value for tax purposes. *Supra* ¶¶ 28, 31-33. The value must be determined as prescribed by

the Wyoming Legislature, which in turn has required the Department to promulgate rules and regulations which an assessor must follow in valuing property. *Supra* ¶¶ 28, 29, 33, 34.

51. The Department's rules and regulations require an assessor to employ a multi-step process which ultimately results in the determination of a property's fair market value for tax purposes. First, an assessor must determine a value for the real property. Second, an assessor must value the improvements on the real property. Third, an assessor must calculate and apply a market adjustment to the improvement value if appropriate. Finally, the real property and improvement values are added to establish a property's fair market value. *Supra* ¶¶ 36–43.

52. The issues raised by Taxpayer focus on the value of her residential lot. Taxpayer contends the County Board erred in affirming the Assessor's valuation of her property because it did not specifically address her arguments related to the value of her residential lot or limit its decision to that issue. [Taxpayer's Opening Brief, pp. 2, 7].

53. Taxpayer computed a value for her lot using historical data from her prior assessments and an analysis of vacant and improved property sales in Neighborhood 1052. *Supra* ¶¶ 6, 9–11. She then added her calculated lot value to the Assessor's improvement value and arrived at a total value for her improved property. *Supra* ¶ 11. She also presented information on asking prices of unimproved lots in Cheyenne. *Supra* ¶ 12.

54. In response to Taxpayer's presentation, the Assessor explained the methodology used to establish the value for all the lots, including Taxpayer's lot, in the LEA where Taxpayer's residence is located. *Supra*, ¶¶ 16–21. Unfortunately, the methodology described by the Assessor was not clearly stated in the 2010 Laramie County Narrative. *Supra* ¶¶ 13, 22. Nor did the Assessor provide the actual calculations used to determine lot values. *Supra* ¶ 21.

55. The State Board finds Taxpayer's evidence related to the valuation of her lot sufficient to overcome the presumption in favor of the Assessor. *Supra* ¶¶ 6, 9–11, 46, 48. This conclusion is based in part on the Assessor's admission that Taxpayer's methodology could be used to value Taxpayer's real property, although an analysis of the market adjustment would be required. [County Board Record, p. 34–35]. It is further based on the fact that the number of vacant land sales reported in the Assessor's 2010 Laramie County Narrative, 14, differs from the number of sales, 30, reflected in the Assessor's Residential Sales for Neighborhood 1052. [Compare County Board Record, p. 80, with County Board Record, pp. 76–79]. Finally, it is based in part on the different explanations of the methodology used to value the land, one contained in the Assessor's Laramie County

Narrative and one offered through the Assessor's testimony at the County Board hearing. *Supra* ¶¶ 22, 54.

56. Taxpayer argues our review should stop at this point, and the County Board's affirmance of the Assessor's valuation be reversed.

All items in the Laramie CBOE [County Board] Findings of Fact address and emphasize the total fair market value of the property. [Record: pages 121 and 122]. The only issue before the Laramie CBOE [County Board] was the correct value of the residential land. [Record: Page 1]. The total property value in this case only changes if a change is made to the value of the residential land. [Record: Page 43].

[*Taxpayer's Opening Brief*, p. 7 (emphasis in original)].

57. The County Board decision demonstrates it understood Taxpayer's protest, her disagreement with the Assessor's valuation of her lot, and the evidence presented on the issue of the value of her lot. The decision also demonstrates the County Board majority correctly identified the ultimate issue before it: whether or not the Assessor correctly determined the fair market value of Taxpayer's property. [See: County Board Record, 117–119, Findings of Fact, Conclusions of Law, and Order, pp. 2–4].

58. An assessor is required by the Wyoming Constitution, applicable statutes and Department rules to determine the fair market value of a taxpayer's property. That valuation process ultimately requires the valuation property as a whole. *Supra* ¶¶ 32, 39, 43. Therefore, the ultimate issue before the County Board was not the value of Taxpayer's lot as suggested by Taxpayer, but rather the "fair market value" of Taxpayer's entire property, real property and improvements.

59. Taxpayer's improvements were valued by the Assessor using the CAMA system. *Supra* ¶ 24. Taxpayer accepted the Assessor's value for her improvements, without any adjustment based on the new, computed lot value. *Supra*, ¶ 11.

60. After valuing the real property and improvements, the Assessor determined whether or not a market adjustment was required. The Assessor explained how the market adjustment was calculated and applied to determine the value of Taxpayer's real property and improvements. These two steps, required by the Department's rules, insure a property is valued at "fair market value." *Supra* ¶¶ 23, 41–42.

61. The Assessor also demonstrated the effect of a change in land value on the overall fair market value of property. The failure to take into consideration the market adjustment, would result in the undervaluation of Taxpayer's lot and a violation of the requirement of equal and uniform valuation. *Supra* ¶¶ 26, 41–42.

62. By failing to take improvement value and market adjustment into account in her presentation, Taxpayer failed to meet her ultimate burden of persuasion. The acceptance of Taxpayer's land value, without consideration of the effect of a reduction in land value on the fair market value of Taxpayer's lot and improvements, would have resulted in the undervaluation of her property relative to the other properties in her neighborhood, in violation of Wyoming's constitutional, statutory and regulatory requirements. *Supra* ¶¶ 28–32, 43.

63. Taxpayer raised two additional issues on appeal. First, she complained the Assessor did not provide the information she testified to prior to the hearing. This appears to be related to the following statutory language:

The county assessor and the person contesting the assessment, or his agent, shall disclose witnesses and exchange information, evidence and documents relevant to the appeal, including sales information from relevant statements of consideration if requested, no later than fifteen (15) days prior to the scheduled county board hearing. The assessor shall specifically identify the sales information used to determine market value of the property under appeal.

Wyo. Stat. Ann § 39-13-109(b)(i).

64. This statutory requirement does not require either party to provide a verbatim recitation of the testimony which may be given at a county board hearing. Rather, it requires the parties to exchange the documentation they intend to rely on at the hearing. There is nothing in the record to indicate the assessor did not provide the information she relied on at the hearing to Taxpayer.

65. To the extent Taxpayer complains the Assessor provided a more complete explanation of the process used to value Taxpayer's real property at the County Board hearing than reflected in the documents provided prior to the hearing or did not provide the information sooner, Taxpayer did not object to the testimony or request additional time to respond to either the Assessor's documents or testimony. Taxpayer's failure to object to the hearing or the testimony of the Assessor at a hearing operated as a waiver of those issues on appeal. *Naibauer v. Board of Platte County Com'rs*, 895 P.2d 445, 448 (Wyo. 1995); *Roberts v. Employment Security Commission*, 745 p.2d 1355, 1359 (Wyo. 1355).

66. Second, Taxpayer contends the vacant land sales used by the Assessor were from a neighborhood not comparable to her neighborhood. The evidence presented at the County Board hearing shows the two neighborhoods are contiguous. [County Board Record, pp. 29, 69–70]. In addition Taxpayer’s own analysis shows the sales prices in the two neighborhoods overlap. [*Taxpayer’s Opening Brief* p. 3]. Based on those facts, the State Board declines Taxpayer’s invitation to substitute its judgement for that of the County Board. The evidence presented at the County Board hearing supports the use of the vacant land sales in Neighborhood 1052 to value the lots in Neighborhood 1051.

67. Taxpayer presented evidence at the County Board hearing sufficient to overcome the presumption in favor of the Assessor on the issue of the valuation of Taxpayer’s real property by presenting evidence which the Assessor acknowledged was an appropriate method for the valuation of her real property. *Supra* ¶ 55.

68. Taxpayer, however, failed meet her ultimate burden of persuasion to prove by a preponderance of the evidence that the valuation of her real property and improvements was not derived in accordance with the required constitutional and statutory requirements for valuing property. *Supra* ¶¶ 45–48. Taxpayer’s attempt to separate her lot value from the total fair market value of her real property and improvements would have resulted in an impermissible undervaluation of her property. *Supra* ¶ 62.

69. There was substantial evidence in the record supporting the County Board decision. The County Board decision was neither arbitrary nor capricious, particularly in light of the County Board’s correct identification of the ultimate issue presented by Taxpayer’s appeal, the fair market valuation of her property and improvements, and the evidence presented to the County Board concerning the method applied by the Assessor in determining that value.

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ORDER


IT IS THEREFORE HEREBY ORDERED the Laramie County Board of Equalization Order affirming the Assessor's 2010 valuation of Taxpayer's property is affirmed.


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

DATED this 30th day of September, 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 30th day of September, 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:

Marilynn Beeman
4321 Superior Avenue
Cheyenne WY 82001

Laramie County Assessor
309 West 20th Street, Suite 1100
Cheyenne WY 82001

Sylvia Lee Hackl,
Deputy Laramie County Attorney
310 West 19th Street, Suite 320
Cheyenne WY 82001



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