

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

IN THE MATTER OF THE APPEAL OF)
FREMONT COUNTY ASSESSOR FROM)
A DECISION OF THE FREMONT COUNTY) Docket No. **2010-126**
BOARD OF EQUALIZATION - 2010)
PROPERTY VALUATION)

DECISION AND ORDER

APPEARANCES

Jodi A. Darrough, Deputy Fremont County and Prosecuting Attorney, appeared on behalf of Eileen Oakley, Fremont County Assessor¹ (Assessor or Petitioner).

Brad A. Lindsey appeared *pro se* on behalf of the Brad A. Lindsey Revocable Trust and the Arden D. Lindsey Revocable Trust (Taxpayers or Respondent).

DIGEST

This appeal is from a decision of the Fremont County Board of Equalization (County Board) rejecting the Assessor's valuation of Taxpayers' property for 2010 tax purposes, and remanding the matter to the Assessor for revaluation. The Assessor's Notice of Appeal was filed with the State Board of Equalization (State Board) effective August 27, 2010. Assessor filed an opening brief on December 8, 2010, as allowed by the November 8, 2010, State Board Briefing Order. Taxpayers filed a one-page response brief on January 12, 2011, five days late, contrary to the Briefing Order. The Assessor did not file a reply brief. Neither party requested oral argument.

¹ Eileen Oakley was the Fremont County Assessor at the time this appeal was filed. Ms. Oakley retired at the end of her elected term in December 2010. Tara Berg was elected Fremont County Assessor and took office in January 2011.

The State Board, comprised of Chairman Steven D. Olmstead, Vice Chairman Deborah J. Smith, and Board Member Paul Thomas Glause² considered the Assessor's Notice of Appeal and Opening Brief, the Response Brief of Respondent, the County Board Record, and the decision of the County Board.

We evaluate 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.*

We reverse the decision of the County Board.

ISSUES

The Assessor identified the following issues:

1. Was the decision of the County Board unsupported by substantial evidence, and/or arbitrary, capricious, or otherwise not in accordance with law?
2. Did the Respondent meet their burden of presenting credible evidence sufficient to overcome the presumption in favor of the Assessor's valuation?
3. Did the Assessor use proper comparable sales in her valuation of the property?

[*Brief of Petitioner*, p. 4].

Taxpayers presented two contentions, which would be considered issues:

1. The Assessor's use of certain comparable properties different than those suggested by the Taxpayers resulted in a higher corresponding fair market value.
2. The Assessor disregarded comparable sales for properties east of the Wind River Reservation, which have a lower value per acre.

[*Taxpayers' Response Brief*].

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

Assessor, in order to prevail, must establish the County Board decision was not supported by substantial evidence, and/or the County Board acted unlawfully, arbitrarily, and capriciously in rejecting the Assessor's value of Taxpayers' property for 2010 tax purposes.

PROCEEDINGS BEFORE THE COUNTY BOARD

The County Board conducted a hearing on July 2, 2010, at which Brad Lindsey, Taxpayer, and Tara Berg, Deputy County Assessor, each testified and presented exhibits. The County Board entered its Decision and Order on August 3, 2010, rejecting the Assessor's 2010 fair market value for Taxpayers' property and remanding the matter to the Assessor for revaluation. The decision was mailed to Taxpayers and the Assessor on August 4, 2010. [County Board Record, pp. 04, 084-089].

STANDARD OF REVIEW

When the State Board hears appeals from a county board, it acts as an intermediate level of appellate review. *Laramie County Board of Equalization v. Wyoming State Board of Equalization*, 915 P.2d 1184, 1188 (Wyo. 1996); *Union Pacific Railroad Company v. Wyoming State Board of Equalization*, 802 P.2d 856, 859 (Wyo. 1990). In its appellate capacity, the State Board treats the county board as the finder of fact. *Id.* In contrast, the State Board acts as the finder of fact when it hears contested cases on appeal from final decisions of the Department of Revenue (Department). *Wyo. Stat. Ann. § 39-11-102.1(c)*. This sharp distinction in roles is reflected in the State Board Rules governing the two different types of proceedings. *Compare Rules, Wyoming State Board of Equalization, Chapter 2 with Rules, Wyoming State Board of Equalization, Chapter 3*. Statutory language first adopted in 1995, when the State Board and the Department were reorganized into separate entities, does not express the distinction between the State Board's appellate and de novo capacities with the same clarity as our long-standing Rules. *1995 Wyo. Sess. Laws, Chapter 209, § 1; Wyo. Stat. Ann. § 39-1-304(a), (currently Wyo. Stat. Ann. § 39-11-102.1(c))*.

By Rule, the State Board's standards for review of a county board's decision are nearly identical to the Wyoming Administrative Procedure Act standards which a district court must apply to hold unlawful and set aside agency action, findings of fact, and conclusions of law. *Wyo. Stat. Ann. § 16-3-114(c)(ii)*. However, unlike a district court, the State Board will not rule on claims that a county board has acted "[c]ontrary to constitutional right, power,

privilege or immunity.” *Wyo. Stat. Ann. § 16-3-114(c)(ii)(B)*. The State Board’s review is limited to a determination of whether the county board action is:

- (a) Arbitrary, capricious, an abuse of discretion or otherwise not in accordance with law;
- (b) In excess of statutory jurisdiction, authority or limitations or lacking statutory right;
- (c) Without observance of procedure required by law; or
- (d) Unsupported by substantial evidence.

Rules, Wyoming State Board of Equalization, Chapter 3 § 9.

Since the State Board Rules are patterned on the judicial review provision of the Wyoming Administrative Procedure Act the State Board looks to precedent under *Wyo. Stat. Ann. § 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 of equalization de novo:

“When an agency’s determinations contain elements of law and fact, we do not treat them with the deference we reserve for findings of basic fact. When reviewing an ‘ultimate fact,’ we separate the factual and legal aspects of the finding to determine whether the correct rule of law has been properly applied to the facts. We do not defer to the agency’s ultimate factual finding if there is an error in either stating or applying the law.” *Basin Elec. Power Co-op., Inc. v. Dep’t of Revenue, State of Wyo.*, 970 P.2d 841, 850-51 (Wyo. 1998)(citations omitted).

Britt v. Fremont County Assessor, 2006 WY 10, ¶ 17, 126 P.3d 117, 123 (Wyo. 2006).

The State Board must also apply this “arbitrary and capricious” standard:

Even if sufficient evidence is found to support the agency’s decision under the substantial evidence test, this [Board] is also required to apply the arbitrary-and-capricious standard as a “safety net” to catch other agency action which might have violated the Wyoming Administrative Procedures Act. *Decker v. Wyoming Medical Comm’n*, 2005 WY 160, ¶ 24, 124 P.3d 686, 694 (Wyo. 2005). “Under the umbrella of arbitrary and capricious actions would fall potential mistakes such as inconsistent or incomplete findings of fact or any violation of due process.” *Id.* (quoting *Padilla v. State ex rel. Wyoming Workers’ Safety and Comp. Div.*, 2004 WY 10, ¶ 6, 84 P.3d 960, 962 (Wyo. 2004)).

State ex rel. Wyoming Workers’ Safety and Comp. Div. v. Madeley, 2006 WY 63, ¶ 8, 134 P.3d 281, 284 (Wyo. 2006).

FACTS PRESENTED TO THE COUNTY BOARD

1. Taxpayers own a parcel of land on the East Fork of the Wind River near Dubois, in Fremont County, Wyoming. The property is described as: T7N R6W S34 - tract of land in the N/2; T41N R105 W S4 - Lots 5 & 6 QCD-635-170 QCD-713-661. The local address is 664 East Fork Road in Dubois. The property consists of 104.92 acres with residential and commercial improvements, irrigated crop land and agricultural range land. [County Board Record, pp. 1, 3, 16-17, 26-28, 84; Hearing Recording].

2. The Notice of Assessment was mailed to Taxpayers on April 19, 2010, indicating a fair market value for the property of \$163,625. [County Board Record, pp. 3, 26; Hearing Recording].

3. Taxpayers filed Fremont County's "Statement to Contest 2010 Property Tax Assessment" form with the County Assessor, dated May 18, 2010³, stating, in summary, the assessment of their property was incorrect for the following reasons:

(1) "Since 2008 assessed land values have increased 738% (residential land 903%). This is not true in these recessionary times."

(2) "One East Fork anomaly sale sparked these increase. The assessment model is flawed, using comparables on the Wind River and to the west of East Fork."

(3) "This is not Wind River property. It should be compared to comparable properties on tributaries to the east and the west of this location."

[County Board Record, pp. 1-3].

4. Taxpayers' contested hearing was conducted before the County Board on July 12, 2010, as Fremont County Docket No. 2010-19. Brad Lindsey testified and presented exhibits on behalf of Taxpayers. [County Board Record, pp. 4, 6, 84; Hearing Recording].

5. As exhibits for the hearing, Mr. Lindsey presented a one-page written letter, described as "the opening brief for Docket No. 2010-19," marked as Exhibit 1; a two page "Contest of 2009 Property Tax Assessment," marked as Exhibit 2; the 2008 Notice of Assessment, marked as Exhibit 3; a photocopy of letter dated "7-14-09" and signed by "Charlton Locke Hamilton," marked as Exhibit 4; and finally, a document entitled "Vacant Land - Sales Ratio

³ It is presumed this is the correct filing date, although there is no date stamp or other indication, such as the receiving person's initials or a written date when the document was received in the Assessor's Office or the County Clerk's Office.

Actual Values,” marked as Exhibit 5. All Taxpayers’ exhibits were admitted.⁴ [County Board Record, pp. 06-12; Hearing Recording].

6. Mr. Lindsey’s only concern was with the fair market valuation of the two-acre “farmstead” located within the 104.92 acres. The remaining 102.92 acres of agricultural land (irrigated and range land), and the buildings were not being protested. [County Board Record, p. 06; Hearing Recording].

7. This is the second year Taxpayers appealed the Assessor’s valuation of their two-acre farmstead. Taxpayers previously appealed the Assessor’s 2009 valuation of their property to the County Board. The County Board affirmed the Assessor’s 2009 valuation, and Taxpayers then appealed that County Board decision to the State Board.

8. The State Board affirmed the County Board’s decision on the 2009 valuation of Taxpayers’ property on September 16, 2010. *Brad A. Lindsey Revocable Trust & Arden D. Lindsey Revocable Trust*, Docket No. 2009-120, September 16, 2010, 2010 WL 4564388 (Wyo. St. Bd. Eq.). The State Board decision was not available to Taxpayers when they filed their 2010 appeal or as they prepared for the 2010 hearing, thus Taxpayers’ arguments and most of their exhibits were identical to their 2009 appeal.

9. Mr. Lindsey opined the 2008 sale of a neighboring property was anomalous and overly skewed the value of his property. He believed the sale price of that property was unrealistically high for the neighborhood. Mr. Lindsey argued the “anomalous sale” should not be used in the comparable sales analysis used by the Assessor, as it was not an open market sale. Mr. Lindsey argued the property was not publicly listed and was only offered to one person who was willing to pay more than market value. [County Board Record, p. 09-11; Hearing Recording].

10. Mr. Lindsey presented and explained Exhibit 4, which was a letter addressed “To Whom It May Concern,” dated “7-14-09” stating “In October of 2007 I acquired 83.3 acres of property up the East Fork valley from Joseph K. Corson for the sale value of \$177,450.” The letter was signed “Sincerely, Charlton Locke Hamilton.” [County Board Record, pp. 13; Hearing Recording].

⁴ Mr. Lindsey, in the recording of Taxpayers’ hearing, identifies the 2009 and 2010 Notices of Assessment as being provided, but neither were marked as an exhibit in the record. The County Board written record filed with the State Board has the 2010 Notice of Assessment on page 3, a 2009 Notice of Assessment on page 7, and a 2009 Amended Notice of Assessment on page 8. None of these notices were marked as an exhibit.

11. Mr. Lindsey admitted the neighboring property sale described in Exhibit 4 was between family members and not an open market sale. Nonetheless, Mr. Lindsey believed this sale should be used in the 2010 comparable sales analysis by the Assessor. [County Board Record, Hearing Recording].

12. Taxpayers asserted the Assessor did not utilize proper comparable market sale properties when assessing their property. Taxpayers asserted the comparable sales utilized by the Assessor only encompassed an area along the Wind River, and not on the tributaries of the Wind River, where their property was located. Taxpayers claimed the Assessor's use of the properties along the Wind River results in higher market values. Taxpayers argued properties along the tributaries do not command the high values that properties along the Wind River do. [County Board Record, p. 09; Hearing Recording].

13. Mr. Lindsey specifically contested the valuation of the two acres of residential land or farmstead on Taxpayers' property. He did not contest any other 2010 property valuation determined by the Assessor. He believed the increased valuation was inappropriate in "these recessionary times." He believed the two-acre residential farmstead on his 104.92 acre property should be compared to properties along tributaries to the east and west of his location, and more specifically to properties on the Wind River Reservation. [County Board Record, pp. 01-02, 09-11, 14; Hearing Recording].

14. Mr. Lindsey wanted his property compared to the properties in Taxpayers' Exhibit 5, which were properties located to the east of the Taxpayers' property and located on the Wind River Reservation. Mr. Lindsey believed the assessed values in Exhibit 5, at less than the \$5,000 per acre for the two-acre residential land (farmstead), were a more appropriate value and should be compared to his property. [County Board Record, pp. 09-11, 14; Hearing Recording].

15. Mr. Lindsey took issue with the Assessor's classification of the two-acre residential farmstead site as river front property. Mr. Lindsey believed the location of the farmstead was not on the Wind River, but rather near the East Fork tributary in a suitable location for the agricultural purposes of all the property. [County Board Record, pp. 09-11; Hearing Recording].

16. Taxpayers argued the increase in value of the two-acre farmstead from \$14,000 in 2008 to \$80,000 in 2009 was unwarranted. Taxpayers argued the additional increase in the 2010 value of the farmstead property was inappropriate due to the Assessor's "flawed and biased reasoning and methods." Taxpayers asserted the Assessor's support for the price of

“the anomalous property” from a local real estate agent was unreliable, due to profit motives of the real estate agent. Mr. Lindsey believed the prior year’s appraisal by the Assessor were in error. [County Board Record, pp. 09-11; Hearing Recording].

17. Taxpayers objected to the “803% increase” in value for their two-acre residential farmstead on their property from 2008 to 2010. Taxpayers believed the more appropriate value of their property is closer to the values in Exhibit 5. Mr. Lindsey believed a better LEA design for his property would be a radius of certain miles from his property, rather than the present LEA designed by the Assessor. Mr. Lindsey stated he didn’t think the value of the residential farmstead should be over \$20,000 per acre. [County Board Record, pp. 09-11, 14; Hearing Recording].

18. Besides his sworn testimony, Mr. Lindsey provided no evidence other than Exhibits 1-5, and documents stated in footnote 4. *Supra*, ¶ 5. [County Board Record, pp. 01-03, 09-14, 85; Hearing Recording].

19. Tara Berg, Deputy County Assessor and a certified Wyoming tax appraiser, presented evidence on behalf of the Fremont County Assessor, Eileen Oakley. Ms. Berg submitted exhibits on behalf of the Assessor. The admitted exhibits were marked A through M. [County Board Record, pp. 16-84; Hearing Recording].

20. Ms. Berg confirmed Taxpayers’ property consisted of 104.92 acres, and was valued by the Assessor’s office in 2010 at \$147,930 for the land, and \$15,695 for improvements, for a total of \$163, 625. Taxpayers’ contested property address is on the East Fork Road. The property is located along the East Fork of the Wind River near Dubois. Ms. Berg acknowledged the only portion of Taxpayers’ 104.92 acres being contested was the two-acre homesite or farmstead. The property was last inspected by the Assessor’s office in June 2009. [County Board Record, pp. 16-17, 22, 26; Hearing Recording].

21. Ms. Berg verified the Assessor utilized the Wyoming Computer Assisted Mass Appraisal (CAMA) system, including the State’s mandated use of the Marshall & Swift cost system, when determining Taxpayers property valuations. Although Taxpayers did not contest the buildings and agricultural property 2010 valuations, Ms. Berg briefly described

the valuation process and provided documentation in the Assessor's Exhibits.⁵ [County Board Record, pp. 16-26; Hearing Recording].

22. Taxpayers' property was included in Fremont County LEA 430R for 2010. At the direction of the Department, the Assessor reduced the number of LEAs in the county beginning in 2009. LEA 430R was established in 2009, and included properties located along waterways in the rural Dubois area. The LEA was considered riverfront property, regardless of where the actual buildings were located on the properties. All properties in LEA 430R were along a waterway on or near the Wind River. The Assessor believed this LEA was properly classified and utilized in her analysis. [County Board Record, pp.17, 23, 27-29; Hearing Recording].

23. The Assessor, relying on Chapter 10, Section 3(B)(c), of the Department's Rules, which defines "non-agricultural lands" as land occupied by buildings and which constitute the homesite including one or more acres, valued the farmstead as residential and not agricultural land. The Assessor treats the farmstead as vacant residential land or unimproved rural land. [County Board Record, pp. 22-23, 56; Hearing Recording].

24. The Assessor valued improved property in Fremont County with an "Agricultural Classification" by including at least two acres of farmstead. The two-acre farmsteads were treated like vacant residential lots and valued at full market value. The buildings on Taxpayers' two-acre farmstead were valued separately. [County Board Record, pp. 17-18, 22-25; Hearing Recording].

25. Taxpayers' two-acre farmstead, although unoccupied, still qualified as a farmstead due to the improvements on the land. [County Board Record, pp. 22-23; Hearing Recording].

26. The Assessor arrived at a value for Taxpayers' two-acre farmstead through use of comparable sales which occurred in the same LEA as Taxpayers' property. [County Board Record, pp. 17-18, 22-25; Hearing Recording].

⁵ It is necessary to point out several Exhibits certified to the State Board from the County Board record had numerous markings, highlights, and other alterations made upon the documents. It is unknown whether these markings and alterations were made during the hearing by a person handling the documents or were made by the party submitting the evidence. Either way, the additional markings on the Exhibits are distracting, unnecessary and not appropriate.

27. Fourteen sales occurred in the same LEA as Taxpayers' property between January 2007 and December 2009. Five of the sales were vacant land, which were compared to Taxpayers' farmstead (without the buildings). The Assessor confirmed "LEA 430R was comprised of properties along waterways in rural Dubois area." [County Board Record, pp. 17-22; Hearing Recording].

28. The Assessor utilized the CAMA's "multiple regression analysis" program to determine the market value of a parcel of land based upon the size and characteristics of the five vacant land sales which occurred in Taxpayers' LEA. The analysis of vacant land sales for these compared properties resulted in a \$63,203 per acre value. The total fair market value of Taxpayers' two-acre farmstead for 2010 was \$126,406. [County Board Record, pp. 23, 25-27; Hearing Recording].

29. Ms. Berg confirmed the two acres of farmstead was uniformly applied throughout the LEA in which Taxpayers' property is located. Each agricultural property with buildings had a two-acre farmstead valued at \$63,203 per acre. Ms. Berg opined Taxpayers' property was undervalued prior to the time LEA 430R was established in 2009, which resulted in a large increase in fair market value when the comparable sales analysis was done. [County Board Record, pp. 24-25; Hearing Recording].

30. The neighboring property which concerned Mr. Lindsey was not the only property in the LEA which affected the value of Taxpayers' two-acre farmstead. Ms. Berg confirmed the neighboring "anomalous sale" was a valid open market sale which was included in the Assessor's comparable sales analysis. [County Board Record, p. 24; Hearing Recording].

31. The Assessor took issue with Taxpayers' representation that the properties identified in Exhibit 5 were properties that were more comparable to Taxpayers' property for Assessor's comparable sales analysis. The Assessor described the property transfers identified in Exhibit 5 and stated those property transfers or sales would "not be valid sales" for use in the comparable sales analysis. [County Board Record, p. 14; Hearing Recording].

32. Ms. Berg asserted the Assessor complied with state law, as well as the Department and the State Board rules and requirements in determining the fair market value of Taxpayers' property. [County Board Record, pp. 24-25; Hearing Recording].

33. The County Board issued its decision on August 3, 2010. The County Board "generally" supported the Taxpayers with the evidence and argument presented in their analysis. The County Board rejected Assessor's valuation of Taxpayers' property and remanded the matter to the Assessor for a revaluation. [County Board Record, pp. 88-89].

34. The Assessor appealed the County Board decision to the State Board effective August 27, 2010. [*Notice of Appeal*].

DISCUSSION OF ISSUES AND APPLICABLE LAW

35. The State Board is required to “hear appeals from county boards of equalization.” *Wyo. Stat. Ann. § 39-11-102.1(c)*. The Assessor filed a timely appeal of the County Board’s decision with the State Board effective August 27, 2010. *Rules, Wyoming State Board of Equalization, Chapter 3 § 2*.

Applicable Law

36. 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.”

37. 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.”

38. 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).

39. The Legislature has required all property in Wyoming to be valued annually at fair market value. *Wyo. Stat. Ann. § 39-13-103(b)(ii)*. The statutory valuation date is January 1 of each year; all taxable property must be valued and assessed for taxation in the name of the owner of the property on that date. *Wyo. Stat. Ann. § 39-13-103(b)(i)*.

40. 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).

41. Each county assessor annually determines the fair market value of residential real 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).*

42. 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).*

43. The Department has promulgated rules which establish appraisal techniques which may be used by an assessor. *Rules, Wyoming Department of Revenue, Chapter 9 § 5, and § 6.*⁶ 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).* The Department Rules also include a number of definitions pertinent to this matter, including “Computer Assisted Mass Appraisal (CAMA),” and “Land Economic Area (LEA).” *Rules, Wyoming Department of Revenue, Chapter 9 § 4 (x.) and (xviii.), § 7 (a).* 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).

44. The Department’s Rules provide for use of a CAMA system. *Rules, Wyoming Department of Revenue, Chapter 9 § 7 (a).* CAMA “automates the comparable sales and

⁶ The Department adopted new rules effective December 7, 2009, revising Chapter 9. *Rules, Department of Revenue.* The references in this decision are to the rules in effect as of December 7, 2009.

replacement cost methods.” *Britt v. Fremont County Assessor*, 2006 WY 10, ¶ 39, 126 P.3d 117, 128 (Wyo. 2006).

45. Department 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 [Professional] (sic) Appraisal Practice (USPAP) Standard 6 (2008-2009) are incorporated herein by reference. In addition, the following definitions shall apply:

* * *

(xvii.) “IAAO”: Refers to The International Association of Assessing Officers.

Rules, Wyoming Department of Revenue, Chapter 9 § 4(a.) (xvii.).

46. 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 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).

47. Land Economic Area (LEA) is defined as:

A geographic area that may encompass a group of neighborhoods, defined on the basis that the lands within its boundaries are more or less equally subject to a set of one or more economic forces that largely determine the value of the lands within this area.

Wyoming Department of Revenue, Chapter 9 § 4 (a.)(xviii.)

48. Neighborhood is defined as:

(1) The environment of a subject property that has a direct and immediate effect on value.

(2) A geographic area (in which there are typically fewer than several thousand properties) defined for some useful purpose, such as to ensure for later multiple regression modeling that the properties are homogeneous and share important locational characteristics.

Rules, Wyoming Department of Revenue, Chapter 9 § 4 (a.)(xxv.).

49. By rule, the Department has defined its own additional and independent responsibility to monitor the assessors' use of CAMA systems:

(i) Annually, the Ad Valorem Tax Division shall monitor each Wyoming County to discuss and ensure utilization of the Department approved CAMA systems and compliance with all Department directives and orders with regard to appraisal method and valuation methodologies. The results shall be compiled by identifying current issues of concern and presented to the Department of Revenue Director no later than January 31st of the following year.

Rules, Wyoming Department of Revenue, Chapter 9 § 8 (a.)(i.).

50. The Department also prescribes how reconciliation of the various appraisal methods are utilized by an assessor:

Section 9. Reconciliation.

(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(a).

51. By rule, the Department has defined “non-agricultural land” to include “farmstead.” Farmsteads are lands occupied by buildings which constitute the homesite, including one or more acres of land used in direct connection with the homesite. *Rules, Wyoming Department of Revenue, Chapter 10 § 3(c)(iv).*

52. Department rule provides “in determining the fair market value for tax purposes of non-agricultural lands as defined in these Rule, the appraiser shall use the methods outlined in Chapter 9, section 6⁷ of these Rules. *Rules, Wyoming Department of Revenue, Chapter 10 § 4.*

53. 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.

⁷ Chapter 9, effective December 7, 2009, was amended renumbering section 6 as section 5.

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 reiterated the “rational method” standard. *Britt v. Fremont County Assessor*, 2006 WY 10, ¶ 18, 126 P.3d 117, 123 (Wyo. 2006).

54. 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 § 6(b), (d)*. “The burden is on the taxpayer to establish any overevaluation.” *Hillard v. Big Horn Coal Co.*, 549 P.2d 293, 294 (Wyo. 1976).

55. 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.

56. 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*, 896 P.2d at 1351.

57. 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’s 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).

58. “The county board of equalization has no power to and shall not set tax policy nor engage in any administrative duties concerning assessments which are delegated to the board, the department or the county assessor.” *Wyo. Stat. Ann. § 39-13-102(d)*.

Discussion

59. The Assessor appealed the decision of the County Board reversing her valuation of Taxpayers’ farmstead. The County Assessor raised three issues in her appeal before the State Board in this matter. Taxpayers, in their 2010 appeal before the County argued the Assessor failed to take into consideration the characteristics of their property and considered wrong comparable properties in determining the fair market value of their farmstead. Taxpayers

also argued the LEA the Assessor utilized was incorrect and should be changed to similar properties as theirs located only on tributaries, or as a specific radius from their property. *Supra*, ¶¶ 3, 12, 34; [*Assessor's Opening Brief*.]

60. This is the second year in which Taxpayers appealed their tax assessment for this property in Fremont County. Taxpayers appealed their tax assessment on this property in 2009, to the County Board and then to the State Board. The Taxpayers' issues presented to the County Board in 2009 and 2010 were essentially identical, as well as, the arguments and evidence presented by them. However, in the 2010 appeal to the County Board, Taxpayers included Exhibit 5, which was a table of sold of properties located in an LEA near the Crow Heart area of the county, which they obtained from the Assessor. Taxpayers believed the properties listed in Exhibit 5 were more appropriate for use in the comparable sales analysis to their property located near the Dubois area. *Supra*, ¶¶ 5, 8-10, 14-15.

61. The State Board affirmed the County Board's decision of Taxpayers' 2009 appeal. In its 2009 decision order, the County Board affirmed the Assessor, as the Taxpayers failed to provide sufficient or credible evidence to overcome the presumption of correctness of the Assessor's valuation of Taxpayers' property. *Supra*, ¶ 8.

62. While it is necessary to explain our decision in this matter, this opinion was shortened with the analysis and references to certain Wyoming Statutes and Department Rules presented in the State Board's opinion in Taxpayers' 2009 appeal, as the statutes and rules are generally the same in this appeal by the Assessor, but are not necessary for this opinion. *See In Re Brad A. Lindsey & Arden D. Lindsey Revocable Trust*, Docket No. 2009-120, Sept. 16, 2010, 2010 WL 4564388 (Wyo. St. Bd. Eq.).

63. The Department Rules on "non-agricultural land" define a farmstead as: "Farmsteads with lands occupied by buildings which constitute the homesite including one or more acres of land used in direct connection with the homesite." Taxpayers' property had land with buildings, which constituted a homesite. *Supra*, ¶¶ 1, 6, 20, 51-52

64. The Department Rules governing *appraisal methods* recognize no such subclass of farmsteads. *Rules, Wyoming Department of Revenue, Chapter 9*. For example, the Cost Approach to value does not recognize separate principles applicable only to farmsteads. *Rules, Wyoming Department of Revenue, Chapter 9 § 5(a)(ii)*.

65. Wyoming Statutes and Department Rules, in Chapter 10, distinguishes between those lands which are to be taxed as agricultural lands, and those which are not. *Wyo. Stat. Ann. § 39-11-103 (b)(x)*; *Rules, Wyoming Department of Revenue, Chapter 10*.

66. All agricultural lands are assessed on the basis of capability to produce. *Wyo. Const. art. 15, § 11(b), Wyo. Stat. Ann. § 39-13-103 (b)(x)(A)*.

67. Nothing in Wyoming statutes indicates the Legislature intended a special tax treatment for farm and ranch residences as well as for agricultural lands. *See Wyo. Stat. Ann. § 39-13-103(b)(x)*. The Department Rules define agricultural lands by reference to use, *i.e.* those lands “being used and employed for the primary purpose of providing gross revenue from agricultural or horticultural use or any combination thereof unless part of a platted subdivision.” *Rules, Wyoming Department of Revenue, Chapter 10 § 3(a)*. The Department Rules specifically exclude farmsteads from classification as agricultural lands. *Rules, Wyoming Department of Revenue, Chapter 10 § 3(c)(iv)*.

68. The Department Rules contemplate two components of value, land and improvements, but have relatively little to say about the calculation of land values. For example, the Department Rules on the cost approach merely provide that, “[t]he cost approach is a method of estimating value by summing land value, where applicable, with the depreciated value of improvements.” *Rules, Wyoming Department of Revenue, Chapter 9 § 5(a)(ii)*. The Rules state that the cost approach requires “[a]ccurate, current land values in the case of real property,” *Id.*, Section 5(a)(ii)(A), but do not say more.

69. The Department Rules provide that “[t]he comparable sales approach is an appropriate method of valuation when there is an adequate number of reliable arms-length sales and properties subject to such sales are similar to the property being valued.” *Rules, Wyoming Department of Revenue, Chapter 9 § 5(a)(i)*.

70. The Wyoming Constitution and statutes expressly recognize three classes of property for ad valorem purposes: the gross product of minerals and mine products; property used for industrial purposes; and all other property, real and personal. *Wyo. Const., art. 15, § 11 (a); Wyo. Stat. Ann. § 39-13-103 (b)(iii)*. The principal distinction between these three classes of property lies in the Legislature’s determination of the percent of fair market value which is taxable value. *Wyo. Stat. Ann. § 39-13-103(b)(iii)*.

71. The Department’s Rules also reflect the fact that the constitutional class of “all other real property” has historically been divided into two categories, residential and commercial. *Rules, Wyoming Department of Revenue, Chapter 10 § 3(c)*.

72. Given this background, the only land sales on which an assessor can rely to reach a comparable value for a farmstead are the sales of vacant land. This was the process used by

the Assessor in this matter. *Supra*, ¶¶ 26-29,39-41,43. The decision as to which comparable sales should be considered when valuing Taxpayers' farmsteads was a matter of professional judgement and discretion of the Assessor. *Supra*, ¶ 53. The Assessor must follow Wyoming statutes and Department's rules pertaining to assessment practices and methods. The Assessor asserted her office followed such statutes and rules. *Supra*, ¶¶ 32, 41, 50. The choice of comparable properties for the analysis is not the decision of the County Board, as suggested in its decision and order in this matter under paragraphs "c. (2)" and "d." on pages 4 and 5. Instructions to re-stratify the LEA, or use other comparable properties for sales comparison would be inappropriate. *Supra*, ¶ 58.

73. The State Board understands Taxpayers' frustration and discontent with the significant increase in their property value between 2008 and 2010. Such frustration and discontent is understandable when properties are not brought to fair market levels on a regular basis by the Assessor. When properties are left undervalued and then brought to the market level within a short period of time, it is understandable a taxpayer would be concerned and raise their ire. The Assessor, when attempting to bring a property to fair market value, is limited to the number of sales available in a narrow range of properties (*i.e.* vacant land and appropriate LEA) and a short period time (*i.e.* three years). *Supra*, ¶¶ 41-43, 46-48, 51-52. Taxpayers in this matter, however, held a different opinion as to what sales should have been considered in valuing the farmstead. A simple difference of opinions is not sufficient to overcome the presumption of correctness of the Assessor's determined value. Mere arguments without credible evidence that something else should be used or done are also not sufficient. *Supra*, ¶¶ 54-55.

74. Taxpayers, in this appeal, did not present evidence which called into question the Assessor's use of the CAMA system. *Supra*, ¶ 56. Taxpayers did not provide any evidence, such as a statistical or econometric land value analysis or a private appraisal of their property, or other documents, reports, or testimony from a professional or expert, which would indicate a value different than the value determined by the Assessor. *Supra*, ¶ 18. The only evidence provided during the County Board hearing, which was different from Taxpayers' 2009 appeal (*Supra*, ¶¶ 7-8), was the table of five properties in Exhibit 5. The Assessor was able to explain why each of the sales listed in Exhibit 5 would not be valid or usable in a sales comparable analysis. The Assessor was also able to explain why Taxpayers' "anomalous neighbor's sale" was valid pursuant the State Board Rules pertaining to Statements of Consideration. *See Rules, State Board of Equalization, Chapter 6 §§ 4 and 5. Supra*, ¶¶ 30-31. Mr. Lindsey, when questioned by the County Board during Taxpayers' 2010 hearing as to what value should be placed on the two-acre farmstead, admitted he had not researched it enough and would only guess a value or suggest a value. *Supra*, ¶ 17.

75. The arguments and evidence presented by Taxpayers during the 2010 appeal hearing were nearly identical to the arguments and evidence presented in their 2009 appeal. The additional evidence admitted in the Exhibit 5 was insufficient to overcome the presumption of a correct valuation by the Assessor. Taxpayers did not provide substantial evidence to rebut or overturn the Assessor's valuation. An Assessor's valuation has a rebuttable presumption of correctness. There must be substantial evidence presented by a taxpayer to overcome that presumption. Taxpayers, in this instance, did not present such evidence. Taxpayers only presented opinions and arguments. There was no basis for the County Board to reverse itself on its 2009 appeal decision on Taxpayers' property. *Supra*, ¶¶ 30-31, 54-57.

76. The County Board, in its decision and order in this matter on page 4, seems to contradict itself between paragraph marked "a." and paragraph marked "c. (1)." The County Board appears to have misinterpreted evidence presented during its hearing on this matter. Taxpayers were only protesting the valuation of the two-acre farmstead on their property, not the agricultural portion of their property. The County Assessor, in presenting her evidence, demonstrated she was following the Department's Rules, and compared sales of vacant land in the same LEA as Taxpayers' property, nearly as close to two acres as possible to arrive at a market value for a two-acre farmstead. The vacant land sales were not used to value the Taxpayers' total 104.92 acres, and certainly were not used to value Taxpayers' agricultural property. *Supra*, ¶¶ 30-31, 43-48, 51-54, 58.

77. In summary, the valuation of the Assessor was presumed valid, accurate, and correct. *Supra*, ¶ 54. In this case, Taxpayers failed to present substantial evidence to overcome the presumption of validity in favor of the Assessor's appraised value for their farmstead, or the Assessor's appraisal methodology. *Supra*, ¶¶ 55-57. Taxpayers failed to present any evidence, other than opinion testimony and argument regarding the LEA in which Taxpayers' property was located and how it should be different from the determination made by the Assessor. The decision of the County Board was not supported by substantial evidence presented by the Taxpayers. The County Board decision was arbitrary and capricious, given the total evidence presented by the parties and the County Board's interpretation of that evidence.

ORDER


IT IS THEREFORE ORDERED the Decision and Order of the Fremont County Board of Equalization rejecting the Assessor's valuation of Taxpayers' property and remanding the matter back the Assessor for a revaluation, is **reversed**.

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

DATED this 9th day of September, 2011.

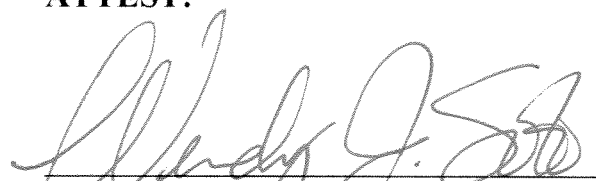
STATE BOARD OF EQUALIZATION


Steven D. Olmstead, Chairman


Deborah J. Smith, Vice-Chairman


Paul T. Glause, Board Member

ATTEST:



Wendy J. Soto, Executive Secretary

CERTIFICATE OF SERVICE

I hereby certify that on the 9th 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:

Brad Lindsey
43 Sylvan Way
Dubois WY 82513

Tara Berg
Fremont County Assessor
Fremont County Courthouse
450 N 2nd Street
Lander WY 82520



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