

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

IN THE MATTER OF THE APPEAL OF)
ROBERT F. JOHNSON, JR. TRUST FROM)
A DECISION OF THE JOHNSON COUNTY)
BOARD OF EQUALIZATION - 2010)
PROPERTY VALUATION)

Docket No. **2010-145**

DECISION AND ORDER

APPEARANCES

Robert F. Johnson, Jr., Trustee, appeared pro se on behalf the Robert F. Johnson, Jr. Trust (Taxpayer).

C. Christian Lukjan, Deputy County Attorney, appeared on behalf of the Johnson County Assessor (Assessor).

DIGEST

Taxpayer appealed a Johnson County Board of Equalization (County Board) decision affirming the Assessor's valuation of Taxpayer's property for 2010 tax purposes to the Wyoming State Board of Equalization (State Board). Taxpayer and Assessor filed briefs as allowed by the February 9, 2011, 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, County Board decision, Taxpayer's Notice of Appeal, Taxpayer's Opening Brief, Respondent Johnson County's [Assessor's] Response Brief and Taxpayer's Reply Brief.

The State Board evaluated Taxpayer's appeal of the County Board decision against its standard of review: whether or not the County Board 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.*

Based on the State Board's review, the decision of the Johnson County Board of Equalization is affirmed.

PROCEEDINGS BEFORE THE COUNTY BOARD

The County Board conducted a hearing on September 29, 2010, at which Mr. Johnson and the Deputy County Assessor, Mary Klaahsen, testified and presented exhibits. [County Board Record, pp. 9, 14, 15, 50; Hearing Recording]. The County Board issued a written decision affirming the Assessor's 2010 fair market valuation of Taxpayer's property on November 15, 2010, which was mailed to the parties on November 16, 2010. [County Board Record, pp. 44 – 49].

ISSUES

Taxpayer identified the following issues in its opening brief:

1. Was the 2010 total fair market value of Taxpayer's property determined in an arbitrary and capricious manner?
2. Was there substantial evidence to support the 2010 total market value of Taxpayer's property?
3. Did the Assessor provide all the information Taxpayer requested?
4. Was there substantial evidence to support the Assessor's determination not to time trend the 2009 (sic) countywide sales?
5. Did the County Board decision deviate from practices and procedures required by Wyoming law, rules, and regulations?

[*Taxpayer's Opening Brief*, pp. 1–2].

Taxpayer identified two additional issues in its Reply Brief:

1. Did the Assessor's brief misstate the evidence, and ignore material evidence?
2. Was the Assessor's suggestion that the matter be remanded for a new hearing inconsistent with the due process requirements of the Wyoming Constitution?

[*Taxpayer's Reply Brief*, p. 1].

The Assessor identified the following issues:

1. Whether the County Board acted arbitrary, capriciously, with an abuse of discretion, or otherwise not in accordance with the law.
2. Whether the County Board decision was in excess of its statutory jurisdiction, authority, limiting laws, or statutory right.
3. Whether the County Board failed to observe procedure required by law.
4. Whether the County Board decision was supported by substantial evidence.

[*Respondent Johnson County's (Assessor's) Response Brief*, p. 1].

STANDARD OF REVIEW

When the State Board hears appeals from a county board, it acts as an intermediate level of appellate review. *Laramie County Board of Equalization v. Wyoming State Board of Equalization*, 915 P.2d 1184, 1188 (Wyo. 1996); *Union Pacific Railroad Company v. Wyoming State Board of Equalization*, 802 P.2d 856, 859 (Wyo. 1990). In its appellate capacity, the State Board treats a county board as the finder of fact. *Id.* In contrast, the State Board acts as the finder of fact when it hears contested cases on appeal from final decisions of the Department of Revenue (Department). *Wyo. Stat. Ann. § 39-11-102.1(c)*. This sharp distinction in roles is reflected in the State Board Rules governing the two different types of proceedings. *Compare Rules, Wyoming State Board of Equalization, Chapter 2 with Rules, Wyoming State Board of Equalization, Chapter 3.*

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 in reviewing an agency action, findings of fact, and conclusions of law. *Wyo. Stat. Ann. § 16-3-114(c)(ii)*. However, unlike a district court, the State Board will not rule on claims a

county board has acted “[c]ontrary to constitutional right, power, privilege or immunity.” *Wyo. Stat. Ann. § 16-3-114(c)(ii)(B)*. The State Board’s review is limited to a determination of whether a county board’s action is:

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

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

Since the State Board Rules are patterned on the judicial review provision of the Wyoming Administrative Procedure Act, we look to precedent under Wyoming Statutes § 16-3-114(c) for guidance. For example, we must apply this substantial evidence standard:

When [a person] challenges a [county board]’s findings of fact and both parties submitted evidence at the contested case hearing, we examine the entire record to determine if the [county board]’s findings are supported by substantial evidence. *Colorado Interstate Gas Co. v. Wyoming Department of Revenue*, 2001 WY 34, ¶ 8, 20 P.3d 528, 530 (Wyo.2001); *RT Commc’ns, Inc. v. State Bd. of Equalization*, 11 P.3d 915, 920 (Wyo.2000). If the [county board]’s findings of fact are supported by substantial evidence, we will not substitute our judgment for that of the [county board] and will uphold the factual findings on appeal. “Substantial evidence is more than a scintilla of evidence; it is evidence that a reasonable mind might accept in support of the conclusions of the agency.” *Id.*

Chevron U.S.A., Inc. v. Department of Revenue, 2007 WY 79, ¶ 9, 158 P.3d 131, 134 (Wyo. 2007).

We review the findings of ultimate fact of a county board *de novo*:

“When an agency’s determinations contain elements of law and fact, we do not treat them with the deference we reserve for findings of basic fact. When

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

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

We 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. Taxpayer owns real property and improvements located at 41 Crazy Horse Trail, Story, Johnson County, Wyoming, consisting of 53.865 acres of land and a single family residence built in 2008. [County Board Record, pp. 16–19].
2. The Assessor valued Taxpayer’s property at \$374,214 for 2010 tax purposes, \$67,116 for the land and \$307,098 for the residential improvements. The 2010 Notice of Assessment was mailed to Taxpayer on April 26, 2010. [County Board Record, p. 16].
3. In 2009, the Assessor initially valued Taxpayer’s real property and improvements at \$287,885. [County Board Record, p. 16; Hearing Recording]. That value was subsequently reduced in October 2009 to \$220,033. [County Board Record, p. 9; Hearing Recording]. The

reduced 2009 value was not reflected on Taxpayer's 2010 assessment notice. [Hearing Recording].

4. The 2010 fair market value of Taxpayer's property increased approximately 70% from its 2009 value. [County Board Record, pp. 9–10; Hearing Recording].

5. Mr. Johnson presented a written statement² and testified at the County Board hearing. [County Board Record, pp. 9–13; Hearing Recording]. The focus of Taxpayer's appeal was the value of the residential improvements. Taxpayer did not dispute the value of its real property.

6. Mr. Johnson requested the Assessor review Taxpayer's 2010 valuation and met with the Deputy Assessor, Ms. Klaahson, on May 4, 2010. He was provided four, one page documents: a computer screen shot, a Property Summary, a Property Detail, and a Cost Breakdown Sheet. [See County Board Record, 17–19]. Mr. Johnson was also provided an explanation for the 70 % valuation increase which he characterized as "totally confusing." [County Board Record, p. 10; Hearing Recording].

7. Mr. Johnson met a second time with the Deputy Assessor on May 24, 2010. Ms. Klaahson explained Taxpayer's property was included in a countywide stratum for 2010 because there were less than five sales in its neighborhood. She further explained sales from 2007, 2008 and 2009 were used to calculate a market adjustment which was applied in calculating the 2010 fair market value of Taxpayer's property. [County Board Record, p. 10; Hearing Recording].

8. Ms. Klaahson offered to provide the countywide sales information to Mr. Johnson if he signed a "secrecy pledge." Mr. Johnson declined. [County Board Record, p. 10; Hearing Recording].

9. Mr. Johnson filed a formal appeal of the Assessor's 2010 assessment on May 25, 2010, asserting the 1.45 neighborhood adjustment, calculated using sales from 2007, 2008 and 2009, "did not need to use 2007 sales data." [County Board Record, pp. 1, 10; Hearing Recording].

² The County Board Record contains two copies of Taxpayer's written statement, County Board Record, pp. 4–8 and 9–13. We have cited to the copy marked Exhibit #1 and introduced at the hearing. [County Board Record, pp. 9–13; Hearing Recording].

10. Using information provided by the Assessor, Mr. Johnson counted the number of sales in 2007, 2008 and 2009 and calculated the average sale price for each year and the percent change between 2007 and 2008 and between 2008 and 2009. [County Board Record, pp. 12, 20–39].

- A. There were 120 valid sales in 2007 with an average sales price of \$211,968.
- B. There were 122 valid sales in 2008 with an average sales price of \$222,365, an increase in average sales price of \$10,397, or +4.9%, from 2007 to 2008.
- C. There were 83 valid sales in 2009 with an average sales price of \$210,187, a decrease of \$12,178, or -5.5%, from 2008 to 2009.

[County Board Record, p.12; Hearing Recording]. The sales information provided by the Assessor identified the properties used in calculating the market adjustment by parcel number. [County Board Record, pp. 20–39].

11. Taxpayer presented no independent evidence of the value of its real property or improvements. Rather, Taxpayer relied on an unsupported assertion that the “market tanked” in 2009 to challenge the Assessor’s market adjustment factor. [County Board Record, p. 9; Hearing Recording].

12. The Deputy Assessor testified concerning 5 exhibits and the method used to determine the fair market value of Taxpayer’s property for 2010. [County Board Record, pp. 16–41; Hearing Recording].

13. The Property Summary and Property Detail listed the characteristics of Taxpayer’s property and improvements used by the Computer Assisted Mass Appraisal (CAMA) system to calculate its value, including replacement cost new less depreciation (RCNLD). [County Board Record, pp. 17-19; Hearing Recording]. Mr. Johnson did not challenge the accuracy of the property characteristics used in valuing Taxpayer’s improvements.

14. The Assessor applied a calculated countywide neighborhood market adjustment of 1.45 to value Taxpayer’s improvements, resulting in a 2010 fair market value of Taxpayer’s improvements of \$307,098. [County Board Record, pp. 16–19; Hearing Recording].

15. The market adjustment factor was calculated using 325 valid residential improved sales from 2007, 2008 and 2009. The sales prices in 2007, 2008 and 2009 were compared

with the values calculated by the CAMA system (RCNLD plus land) for the same properties. [County Board Record, Hearing Recording].

16. The initial sales ratio study indicated the values calculated using the CAMA system were approximately 51% of the actual sales values for the same residential properties. [County Board Record, Hearing Recording]. The Assessor then calculated a market adjustment factor which, when applied to the RCNLD, resulted in a sales ratio of between 95% and 100%. Exhibit C reflected the effect of the application of the market adjustment to the calculated values of each sold property and the sales ratio study results. [County Board Record, pp. 20–39; Hearing Recording]. A complete explanation of the sales ratio study was not provided to Mr. Johnson until the hearing. [County Board Record, Hearing Recording].

17. The calculated market adjustment was used by the Assessor to value all Johnson County residential properties in neighborhoods where there were fewer than 5 sales in 2009, including Taxpayer's property. [County Board Record, pp. 20–39; Hearing Recording].

18. The use of three years sales data in calculating the market adjustment was supported by a scattergram plotting sales prices by sales date. The graph and statistical analysis (R^2 Linear 6.75E-4) supported the Assessor's conclusion that no time adjustment of 2007 or 2008 sales prices was necessary. There was no statistically significant correlation between sales date and sales price requiring a time adjustment. [County Board Record, p. 41; Hearing Recording].

19. The significant increase in the fair market value of Taxpayer's property from 2009 to 2010 was due to the Assessor's failure to apply a market adjustment when calculating Taxpayer's 2009 fair market value. [County Board Record, Hearing Recording].

20. The County Board issued a written decision November 15, 2010, affirming the Assessor's valuation. The decision was served on the Taxpayer on November, 16, 2010. [County Board Record, pp. 44–49].

21. Taxpayer appealed the County Board decision to the State Board on December 14, 2010. [State Board Record].

APPLICABLE LAW

22. The State Board is required to "hear appeals from county boards of equalization." *Wyo. Stat. Ann. § 39-11-102.1(c)*. A notice of appeal must be filed with the State Board

within 30 days of a county board decision. *Rules, Wyoming State Board of Equalization, Chapter 3 § 2.*

23. The Wyoming Constitution, article 15, § 11(b), 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.”

24. 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).*

25. 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).

26. All property in Wyoming is valued annually at fair market value on January 1 of each year. *Wyo. Stat. Ann. § 39-13-103(b)(i) & (ii).*

27. 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).

28. 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).*

29. 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)*.

30. 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)*. Rules promulgated by the Department pursuant to this statutory authority 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).

31. The Department has promulgated rules which establish 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)*.

32. The Department’s Rules provide for use of a CAMA system. *Rules, Wyoming Department of Revenue, Chapter 9 § 7*. CAMA “automates the comparable sales and replacement cost methods.” *Britt v. Fremont County Assessor*, 2006 WY 10, ¶ 39, 126 P.3d 117, 128 (Wyo. 2006).

33. 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 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

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)*. All references are to the Department’s rules in effect on January 1, 2010.

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).

34. The IAAO Standard on Ratio Studies, Section 6.4, states that if a ratio sample size is inadequate to produce a reliable statistical measure, four alternatives should be considered. They are listed as: Reestratification; Extend the period from which sales are drawn; Enlarge sample by validating previously rejected sales; and Impute appraisal performance. *IAAO Standards on Ratio Studies, Section 6.4, p. 15.*

35. The IAAO standard also provides:

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

IAAO Standards on Ratio Studies, Section 6.4, p. 15 (emphasis added).

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

(xx.) "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)(xx).

37. The Department's rules further prescribe 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(a)(iv).

38. The Department's Rules requires the Assessor to reconcile the value derived using the approaches to valuation:

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

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

39. 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).

40. 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).

41. The presumption in favor of an assessor’s valuation is especially valid where the Assessor valued the property according to the Department’s Rules and Regulations which provide for the use of the CAMA system in the assessment of real property. *Rules, Wyoming Department of Revenue, Chapter 9 § 7*. “The burden is on the taxpayer to establish any overvaluation.” *Hillard v. Big Horn Coal Co.*, 549 P.2d 293, 294 (Wyo. 1976).

42. 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.

43. The Wyoming Supreme Court has specifically 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.

44. Our evaluation of this appeal turns in part on the question of whether there was substantial evidence in the record which reasonably supports the County Board decision. In determining whether the required substantial evidence was 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

45. Taxpayer filed a timely notice of appeal with the State Board on December 14, 2010, appealing the County Board decision. *Supra* ¶¶ 20–22.

46. The focus of Mr. Johnson’s complaint to the County Board was the Assessor’s use of three years sales data to develop a market adjustment factor which was applied in valuing Taxpayer’s property.

47. The County Board found time trending was not required based on the statistical analysis the Assessor provided at the County Board hearing and ultimately held the Assessor

performed her duties in assessing Taxpayer's property in accordance with law. [County Board Record, pp. 44–49].

48. On appeal to the State Board, Taxpayer argues the County Board erred in affirming the Assessor's use of multiple years sales data in developing a market adjustment. He further argues the Assessor provided insufficient information on the valuation of its property. [*Taxpayer's Opening Brief*].

49. Wyoming law and 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* ¶¶ 13–18, 30–38.

50. The issues raised by Taxpayer focus on the market adjustment applied by the Assessor in valuing Taxpayer's improvements. Taxpayer contends the County Board erred in affirming the Assessor's valuation of its property because the Assessor used sales information from 2007, 2008 and 2009 in developing a market adjustment. [*Taxpayer's Opening Brief*].

51. The Assessor's use of sales information from three years is supported by the applicable Department rules and IAAO standards. *Supra* ¶¶ 34–37. The Department's rules clearly and explicitly require the Assessor to calculate a market adjustment and the Deputy Assessor testified to its calculation in conformity with the Department's Rule. *Supra* ¶¶ 14–18, 36–37.

52. The applicable IAAO Standard suggests the use of multiple years sales data in computing a market adjustment with a caveat that time adjustment may be necessary. *Supra* ¶¶ 34–35.

53. Taxpayer argued the Assessor erred by using the 2007 and 2008 sales or by not adjusting the sales for time. However, the statistical analysis provided by the Assessor which included a scattergram and statistical analysis indicating no time adjustment was necessary was sufficient evidence to support the County Board's decision affirming the Assessor's determination use the sales without a time adjustment. *Supra* ¶ 18.

54. In questions to the Deputy Assessor and in its brief, Taxpayer suggests the sales ratio study offered by the Assessor does not support the Assessor's calculated market adjustment.

Taxpayer's arguments were based on an assumption that the improvement values (Imp. Value) and assessed values did not include the market adjustment. The arguments may have been accurate if the information in the report provided by the Assessor contained unadjusted assessed values (Total Value), but it did not. The Residential Improved Parcels – Sales Ratio Actual Values report contained the assessed values for each of the listed properties **after the application of the market adjustment** and supported the market adjustment calculation. *Supra* ¶¶ 16, 18.

55. Taxpayer accepted the Assessor's value for its land. *Supra* ¶ 5. The Assessor used the methodology set out in the Department's Rules to establish the value for Taxpayer's improvements using the CAMA system. *Supra* ¶¶ 13–18.

56. Taxpayer raised two additional issues on appeal. First, Mr. Johnson complained the Assessor did not provide sufficient information for him to fully understand the valuation process. The Department's Rule provides:

Section 11. Written Explanation to Taxpayer.

(a.) Any taxpayer whose property is appraised under W.S. 39-13-103(b)(v) and 39-13-107(a)(i) and this Chapter will be notified of the appraised value of the subject property and, upon request, will be provided a statement indicating those methods set forth in section 6 of this chapter that were used in arriving at the appraisal. The explanation provided to any taxpayer should be clearly defined and readily available to the taxpayer. Supporting documentation which is readily available within the CAMA system and its associated external programs, such as but not limited to PASW, and Microsoft Excel spreadsheets and analysis used in valuation of a property within a specific strata shall be available upon request by the taxpayer. These forms shall be consistent across the entire state and from county to county, with the exception of the narrative, which may differ between counties as long as all of the parameters in the addendum are met. These forms will be considered to be public documents and will be available to the taxpayer upon request. There will be three levels of explanation available:

(i.) An overview of the property taxation process for County assessed properties which will be published by the Department of Revenue and available on the Department website;

(ii.) A valuation explanation consisting of a county specific written narrative and the Overall LEA/NBHD/NBHD Group Statistics forms as well as Sales Ratio Reports;

- (iii.) Individual property explanation consisting of the property summary report, property detail report, cost breakdown sheet.
- (iv.) Copies of these forms can be seen in the attached addendum.

Rules, Wyoming Department of Revenue, Ch 9 § 11.

57. Our review of the record indicates the Assessor provided Taxpayer information substantially complying with Chapter 9 § 11(a)(ii.) and (iii.) of the Department's Rules. The overall group statistics, sales ratio report, and individual property explanation was provided to Mr. Johnson and was presented at the hearing. *Supra* ¶¶ 13, 14–18. To the extent Taxpayer was frustrated because the Assessor did not provide a more complete explanation of the process used to value Taxpayer's real property, Taxpayer did not request a continuance or object to the testimony regarding the assessment methodology. Taxpayer's failure to request a continuance or to object to the testimony of the Deputy 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).

58. Second, Taxpayer contends the sales information provided by the Assessor was not the same as the statements of consideration which he was offered during a meeting with the Deputy Assessor. Taxpayer did not raise this issue at the County Board hearing. Taxpayer was provided the Residential Improved Parcels - Sales Ratio Actual Values report which contained the following information: account number, parcel number, number of buildings, land value, improvement value, total value, sales date, sales price, deed type, building square footage, quality, design, neighborhood, LEA, property type and condition for each sold property. [County Board Record, pp. 20–39]. While the report identified the owner by account number rather than name and the property location by parcel number and neighborhood rather than address, the summary provided as much, if not more, information than a statement of consideration would have provided for each sale.

59. The State Board notes Taxpayer attempted to incorporate additional information in its brief, information either not available or not presented at the County Board hearing. Because the information was presented at a time and in a manner not allowed by Chapter 2, Section 8 of the State Board Rules, it has not been considered. *Rules, Wyoming State Board of Equalization, Chapter 2 § 8*. Only the evidence presented at the County Board hearing was considered by the State Board in this matter. To the extent the information led the Assessor to suggest remanding this matter to the County Board, the State Board finds such suggested action unnecessary in light of Taxpayer's failure to comply with the State Board's rule and this opinion.

60. Taxpayer did not present evidence at the County Board hearing sufficient to overcome the presumption in favor of the Assessor's valuation of Taxpayer's real property and improvements. Taxpayer's opinions that 2007 and 2008 sales information should not have been used or that the "real estate market tanked in 2009," without corroboration or independent evidence, was not sufficient to overcome the presumption in favor of the Assessor's valuation derived using the CAMA system. *Supra* ¶¶ 40–43.

61. The decision of the County Board is supported by substantial evidence. Taxpayer failed to present sufficient evidence to prove by a preponderance of the evidence the approach used by the Assessor was not a rational method, not equally applied to all property, or did not achieve essential fairness. The County Board decision was neither unlawful, arbitrary, nor capricious.

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ORDER

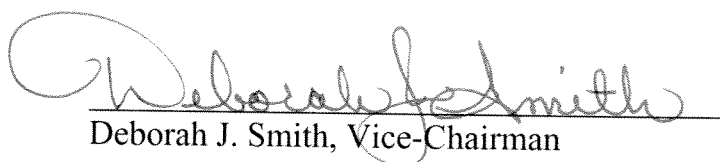
IT IS ORDERED the Johnson County Board of Equalization Findings of Fact and Conclusions of Law is **affirmed**.

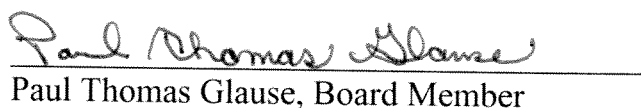
Pursuant to Wyo. Stat. Ann. §16-3-114 and Rule 12, Wyoming Rules of Appellate Procedure, any person aggrieved or adversely affected in fact by this decision may seek judicial review in the appropriate district court by filing a petition for review within 30 days of the date of this decision.

DATED this 15th day of December, 2011.

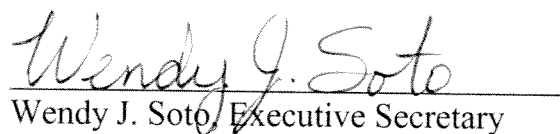
STATE BOARD OF EQUALIZATION


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 15th day of December, 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:

Robert F. Johnson, Jr., Trustee
Robert F. Johnson, Jr., Trust
41 Crazy Horse Trail
Story WY 82832

Cindy Rogers
Johnson County Assessor
76 N. Main St.
Buffalo WY 82834

C. Christian Lukjan
Deputy County Attorney
98 South Main Street, Suite A
Buffalo, WY 82834



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

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