

BEFORE THE STATE BOARD OF EQUALIZATION

FOR THE STATE OF WYOMING

IN THE MATTER OF THE APPEAL OF)
CROOK COUNTY ASSESSOR FROM)
A DECISION OF THE CROOK COUNTY) Docket No. 2011-116
BOARD OF EQUALIZATION - 2011)
PROPERTY VALUATION)
(Tenke & Tongco Property))

DECISION AND ORDER

APPEARANCES

Joseph M. Baron, Crook County and Prosecuting Attorney, appeared on behalf of the Crook County Assessor, Lisa Fletcher (Assessor).

No one appeared before the State Board of Equalization on behalf of Sheila Tenke and Sherri Tongco (Taxpayers).

DIGEST

The Assessor appealed the Crook County Board of Equalization (County Board) decision granting Taxpayers' request to have their land classified as agricultural for 2011 tax purposes to the Wyoming State Board of Equalization (State Board). The Assessor relied on the original Notice of Appeal to the State Board in lieu of filing a brief as permitted by the State Board March 6, 2012, Briefing Order and Rules. Taxpayers did not file a brief or otherwise appear in this matter. Neither party requested oral argument.

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

The State Board evaluated the Assessor's appeal of the County Board decision pursuant to its standard of review: whether or not the County Board decision was arbitrary, capricious, unsupported by substantial evidence, and/or contrary to law. *Rules, Wyoming State Board of Equalization, Chapter 3 § 9*. Based on that review, the decision of the Crook County

Board of Equalization is reversed and this matter is remanded to the County Board for entry of an order dismissing Taxpayers' appeal as untimely.

PROCEEDINGS BEFORE THE COUNTY BOARD

Taxpayers filed a Statement of Appeal which was received by the Assessor on November 4, 2011. [County Board Record pp. 01-08]. The County Board conducted a hearing on December 6, 2011, at which the Assessor presented testimony and exhibits. Taxpayers were not present for the County Board Hearing. [County Board Record, p. 17; Tr. p. 1]. The County Board issued a written decision reversing the Assessor's 2011 fair market valuation of Taxpayers' property on December 9, 2011. [County Board Record, pp. 29-37]. The County Board concluded Taxpayers' "appeal is granted and should be classified as agricultural for 2011." [County Board Record, p. 35].

ISSUES

The Assessor identified three issues in her opening brief:

1. Whether Taxpayers filed a timely appeal within 30 days of the date of the Assessment Schedule was mailed by the Assessor to Taxpayers?
2. Whether Taxpayers were entitled to agricultural valuation when they failed to file the requested Affidavit for Agricultural Classification in a timely manner?
3. Whether the County Board had authority to adjust Taxpayers' assessment when the Taxpayers failed to appear for the scheduled County Board hearing?

[Assessor's Notice of Appeal, pp. 2-3].

Taxpayers did not file a brief or otherwise appear in this matter.

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 section 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 also apply this standard when reviewing conclusions of law:

Questions of law are reviewed de novo, and “[c]onclusions of law made by an administrative agency are affirmed only if they are in accord with the law. We do not afford any deference to the agency's determination, and we will correct any error made by the agency in either interpreting or applying the law.” *Bowen v. State, Dep't of Transp.*, 2011 WY 1, ¶ 7, 245 P.3d 827, 829 (Wyo.2011) (quoting *State ex rel. Workers' Safety & Comp. Div. v. Garl*, 2001 WY 59, ¶ 9, 26 P.3d 1029, 1032 (Wyo.2001)).

Maverick Motorsports Group, LLC v. Department of Revenue, 2011 WY 76, ¶ 12, 253 P.3d 125, 128 (Wyo. 2011).

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. Taxpayers own real property and improvements in Crook County, Wyoming, consisting of 1079.82 acres of land, a one story house and additional buildings. [County Board Record, Ex. 3, p. 15; Tr. pp. 2-3].
2. The Assessor classified Taxpayers' land as residential and valued it at \$2,061,376 for 2011 tax purposes. The Assessor valued the house and buildings on Taxpayers' land at \$19,396. The 2011 total fair market value for Taxpayers' real property and improvements was \$2,080,722. [County Board Record, Ex. 3, p. 15].
3. Taxpayers' real property and improvements were valued at \$90,230 in 2010. For 2011, the total fair market value of Taxpayers' property increased \$1,990,492, or approximately 23 times its 2010 value. [County Board Record, Ex. 3, p. 15 (by calculation)].
4. The increase in value was due to the Assessor's reclassification of Taxpayers' land from agricultural in 2010 to residential in 2011. [County Board Record, Ex. 3, p. 15].
5. On February 2, 2011, the Assessor mailed Taxpayers a letter and "Affidavit of Agricultural Classification." The letter asked Taxpayers to fill out the affidavit and return it to the Assessor by March 31, 2011, to avoid reclassification of their property as something other than agricultural. [County Board Record, Ex. 1-2, pp.12-14; Tr. pp. 2-3].
6. While Taxpayers' claimed they faxed an "Affidavit of Agricultural Classification" on February 23, 2011, and mailed the original to the Assessor, the Assessor did not receive either affidavit at that time. [County Board Record, p. 05; Tr. pp. 4-5]. The Assessor received a copy of the Taxpayers' Affidavit for Agricultural Classification on October 28, 2011. [County Board Record, Ex. 4, p. 16; Tr. p. 4].
7. The Assessor mailed the 2011 Notice of Assessment to Taxpayers on April 25, 2011. [County Board Record, Ex. 3, p. 15; Tr. pp. 2-3].
8. Taxpayers subsequently received a tax notice from the Crook County Treasurer reflecting \$12,156.96 tax due for 2011, based on a market value of \$2,080,772 and a taxable value of \$197,674. [County Board Record, p. 02]. Taxpayers contacted the Assessor on October 21, 2011, to question the significant tax increase for 2011. [County Board Record, Tr. pp. 4-5].

9. Taxpayers then filed an Statement of Appeal which was received by the Assessor on November 4, 2011. [County Board Record, pp. 01–08; Tr. p. 3].

10. The County Board held a hearing on Taxpayers’ appeal on December 6, 2011, at which the Assessor testified and presented exhibits. Taxpayers did not appear at the hearing. [County Board Record, p. 17; Tr. pp.1-4, 6].

11. On December 9, 2011, the County Board issued its written Order Granting Protest, including findings of fact and conclusions of law. The County Board ordered that Taxpayers’ “appeal is granted and should be classified as agricultural for 2011.” [County Board Record, pp. 19-28]. The County Board found the Assessor mailed Taxpayers the 2011 Notice of Assessment on April 25, 2011, and the Taxpayers “filed an appeal on Form 1, ‘Statement of Appeal’ which was received by the Assessor and County Board on November 4, 2011.” [County Board Record p. 19, ¶¶ 4, 5 (emphasis in original)]. The County Board also found Taxpayers did not appear at the scheduled County Board hearing. [County Board Record, p. 20, ¶ 8].

12. The Assessor appealed the County Board decision to the State Board by filing a Notice of Appeal with the State Board on December 22, 2011. [*Assessor’s Notice of Appeal*].

APPLICABLE LAW

13. 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*.

14. 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)*. Each county assessor 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)*. An assessor is required to mail an assessment schedule to all taxpayers at their last known address “[o]n or before the fourth Monday in April, or as soon thereafter as is practicable.” *Wyo. Stat. Ann. § 39-13-103(b)(vii)*.

15. The Taxpayer has the right to appeal an assessor’s annual property valuation by filing a notice of appeal with the assessor within thirty (30) days of the Assessor’s mailing of the assessment notice.

(b) Appeals. The following shall apply:

(i) The county assessor shall notify any person whose property assessment has been increased by the county board of equalization of the increase. Any person wishing to review an assessment of his property shall contact the county assessor not later than thirty (30) days after the date of the assessment schedule. **Any person wishing to contest an assessment of his property shall file not later than thirty (30) days after the date of the assessment schedule properly sent pursuant to W.S. 39-13-103(b)(vii), a statement with the county assessor specifying the reasons why the assessment is incorrect.** The county assessor shall provide a copy to the county clerk as clerk of the county board of equalization. The county assessor and the person contesting the assessment, or his agent, shall disclose witnesses and exchange information, evidence and documents relevant to the appeal, including sales information from relevant statements of consideration if requested, no later than fifteen (15) days prior to the scheduled county board of equalization hearing. The assessor shall specifically identify the sales information used to determine market value of the property under appeal. A county board of equalization may receive evidence relative to any assessment and may require the person assessed or his agent or attorney to appear before it, be examined and produce any documents relating to the assessment. No adjustment in an assessment shall be granted to or on behalf of any person who willfully neglects or refuses to attend a meeting of a county board of equalization and be examined or answer any material question upon the board's request. Minutes of the examination shall be taken and filed with the county clerk;

Wyo. Stat. Ann. § 39-13-109(b)(i) (emphasis added).

16. Wyoming statutes set the duties of the County Board in the assessment process:

(c) The board of county commissioners of each county constitutes the county board of equalization. The county board shall meet at the office of the county commissioners at such times as necessary to perform its statutory duties, but no earlier than the fourth Tuesday in April to consider current year assessments. The county clerk shall act as clerk of the county board. The county assessor or his designee shall attend all meetings to explain or defend the assessments. The county board of equalization shall:

- (i) Add to the assessment roll and value any taxable property within the county not included within the assessment roll as returned by the county assessor at its meeting in April;
- (ii) Equalize the assessment and valuation of the taxable property which is assessed and valued by the county assessor;

(iii) Correct any assessment or valuation contained in and complete the assessment roll;

(iv) Hear and determine the complaint of any person relative to any property assessment or value as returned by the county assessor subject to W.S. 39-13-109(b)(i);

(v) Decide all protests heard and provide the protestant with a written decision no later than the first Monday in August.

(d) 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(c) & (d) (emphasis added).

17. “Timely filing of a request for administrative review of an agency decision is mandatory and jurisdictional.” *Chevron U.S.A. v. Department of Revenue*, 2007 WY 62, ¶ 7, 155 P.3d 1041, 1043 (Wyo. 2007); *Antelope Valley Improvement v. State Bd. of Equalization*, 992 P.2d 563, 567 (Wyo. 1999); *Fullmer v. Wyoming Employment Sec. Com'n*, 858 P.2d 1122, 1124 (Wyo. 1993).

18. The failure to file an appeal with an Assessor within the statutory 30 day time frame is a jurisdictional defect which the State Board must independently consider even if not raised by any party. *Wyo. Stat. Ann. § 39-13-109(b)(i)* supra ¶ 20; *Hall v. Park County*, 2010 WY 124, ¶ 3, 238 P.3d 580, 581 (Wyo. 2010); *Ragsdale v. Hartford Underwriters Ins. Co.*, 2007 WY 163, ¶ 4, 169 P.3d 78, 80 (Wyo. 2007); *Plymale v. Donnelly*, 2006 WY 3, ¶ 4, 125 P.3d, 1022, 1023 (Wyo. 2006); *Robbins v. South Cheyenne Water & Sewage Dist.*, 792 P.2d 1380, 1384 (Wyo. 1990).

19. The jurisdictional defect is not be waived where there is a mistake by a party or the tribunal. *Wyo. Stat. Ann. § 39-13-109(b)(i)*; *In re Adoption of CF*, 2005 WY 118, ¶ 30, 120 P.3d 992, 1003 (Wyo. 2005); *Miller v. Murdock*, 788 P.2d 614, 616-617 (Wyo. 1990). “An agency is wholly without power to modify, dilute or change in any way the statutory provisions from which it derives its authority. When an administrative agency takes an action that exceeds its authority or proceed in a manner unauthorized by law, that action is null and void.” *Platte Development Co. v. Environmental Quality Council*, 966 P.2d 972, 975 (Wyo. 1998); see *Billings v. Wyo. Bd. of Outfitters and Guides*, 2001 WY 81, ¶ 24, 30 P.3d 557, 568-569 (Wyo. 2001).

ANALYSIS

20. The Assessor filed a timely notice of appeal with the State Board on December 22, 2011, appealing the December 9, 2011, County Board decision. *Wyo. Stat. Ann. § 39-11-102.1(c)*; *supra* ¶¶ 12-13.

21. The appeal of the Assessor's annual valuation to the County Board of Equalization requires the timely filing of a notice of appeal with the Assessor. *Supra* ¶¶ 17-19. The County Board's Decision and Order and the State Board's independent review of the record clearly establish that the Taxpayers did not file their notice of appeal within 30 days from the mailing of the assessment notice by the Assessor as required by Wyoming Statutes section. 39-13-103(a)(v). *Supra* ¶¶ 7, 9, 11, 15-19.

22. Taxpayers' appeal to the County Board was not timely. The County Board, therefore, did not have jurisdiction to consider the Taxpayers' protest of the Assessor's 2011 property valuation, and dismissal of Taxpayers' appeal by the County Board was required. *Supra* ¶ 17-19.

23. Because the State Board concludes the County Board did not have jurisdiction to hear Taxpayers' appeal, it is not necessary to address the other issues raised by the Assessor in this matter.

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ORDER

IT IS ORDERED the decision of the Crook County Board of Equalization is reversed; and

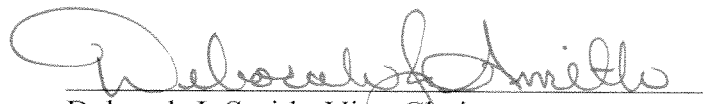
IT IS FURTHER ORDERED this matter is remanded to the Crook County Board of Equalization for the entry of an order dismissing Taxpayers' appeal as untimely.

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 22nd day of October, 2012.

STATE BOARD OF EQUALIZATION


Steven D. Olmstead, Chairman


Deborah J. Smith, Vice-Chairman


Paul Thomas Glause, Board Member

ATTEST:


Jana R. Fitzgerald, Executive Assistant

CERTIFICATE OF SERVICE

I hereby certify that on the 22nd day of October 2012, I served the foregoing **DECISION AND ORDER** by placing a true and correct copy thereof in the United States Mail, postage prepaid, and properly addressed to the following:

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