

**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. **2011-120**
BOARD OF EQUALIZATION - 2011)
PROPERTY VALUATION (Dale 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 on behalf of Kevin B. Dale or the Donald D. and Colleen B. Dale Living Trust, Taxpayers (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 filed with the State Board of Equalization in lieu of filing a brief as permitted by the State Board's March 6, 2012, Briefing Order and Rules. Taxpayers did not file a brief. 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 Assessor's Notice of Appeal.

The State Board evaluated the Assessor's appeal of the County Board decision against 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 with directions to dismiss Taxpayers' appeal as untimely.

PROCEEDINGS BEFORE THE COUNTY BOARD

The County Board conducted a hearing on Taxpayers' appeal on December 6, 2011, at which the Assessor appeared and presented testimony and exhibits. Taxpayers did not appear at the County Board hearing. [County Board Record, p. 20; Tr. p. 02]. 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. 19–27]. The County Board concluded Taxpayers' property "should be classified as agricultural for 2011." [County Board Record, p. 25].

ISSUES

The Assessor identified the following issues in her Notice of Appeal:

1. Whether Taxpayers filed a timely appeal within 30 days of the date of the Assessment Schedule?
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?

[*Notice of Appeal*, pp. 3-4].

Taxpayers did not file a brief or otherwise appear before the State Board.

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 in Crook County, Wyoming, consisting of two parcels, one 320 acre parcel and one 183.460 acre parcel. [County Board Record, p. 1; Ex. 3, pp. 13-14].
2. The Assessor classified Taxpayers' parcels as vacant residential land with a total fair market value of \$961,105 for 2011 tax purposes. [County Board Record, Ex. 3, pp. 13-14, Tr. pp. 5-6].
3. In 2010 Taxpayers' parcels were classified as agricultural and valued at \$34,572. [County Board Record, Ex. 3, pp. 13-14; Tr. pp. 5-6].
4. The combined fair market value of Taxpayers' properties increased by \$926,533 from 2010 to 2011, or approximately 27.8 times the 2010 fair market value. [County Board Record, Ex. 3, pp. 13-14 (by calculation)].
5. On February 2, 2011, the Assessor mailed Taxpayers a letter and an "Affidavit for 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. 10-12; Tr. pp. 3-4].
6. The Assessor mailed Taxpayers the 2011 Notices of Assessment on April 25, 2011. [County Board Record, Ex. 3, pp. 13-14, Tr. p. 04].
7. The lessee of Taxpayers' land contacted the Assessor in November 2011 to inquire about the increase in Taxpayers' taxes. The lessee indicated he had a verbal lease with Taxpayers but had not made payments the last couple years because he was rebuilding fence in lieu of making cash payments. [County Board Record, Tr. pp. 05-06].
8. The Taxpayers did not provide the Assessor with an Affidavit for Agricultural Classification until November 28, 2011. [County Board Record, Ex. 4, pp. 15-16; Tr. p. 05].
9. Taxpayer faxed a Statement of Appeal to the Assessor on Friday, November 25, 2011 (the Friday after Thanksgiving), which was file stamped as received by the Assessor on Monday, November 28, 2011. [County Board Record, pp. 01-06; Tr. p. 04].
10. The County Clerk sent Taxpayers' a Notice of Hearing on November 28, 2011, advising Taxpayers the County Board hearing on their appeal was scheduled for December 6, 2011, at 3:30. [County Board Record, pp. 07-08; Tr. pp. 2-3].

11. The County Board held a hearing on Taxpayers' appeal on December 6, 2011. Taxpayers did not request a continuance of the hearing or request to appear by telephone at the hearing. Taxpayers did not appear at the County Board hearing. [Tr. pp. 01-3, 4-7].

12. On December 9, 2011, the County Board issued its written Order Granting Protest, including findings of fact and conclusions of law, ordering that Taxpayers' "appeal is granted and should be classified as agricultural for 2011." [County Board Record, pp. 19-28]. The County Board found that "[t]he Assessor mailed on April 25, 2011 the [Taxpayers] the assessment schedule called the '2011 Notice of Assessment' dated April 25, 2011" and that Taxpayers "filed an appeal on Form 1, 'Statement of Appeal' which was received by the Assessor and County Board on November 28, 2011." [County Board Record, pp. 19-20 (emphasis in original)]. The County Board also found Taxpayers did not appear at the scheduled County Board hearing. [County Board Record, p. 20].

13. The Assessor filed a Notice of Appeal with the State Board on December 22, 2011. [Notice of Appeal].

APPLICABLE LAW

14. 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*.

15. 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)*.

16. A 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).

17. Wyoming statutes set the duties of a county board of equalization 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).

18. “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); see *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).

19. 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).

20. 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

21. 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* ¶¶ 12-14.

22. The appeal of the Assessor's annual valuation to the County Board requires the timely filing of a notice of appeal with the Assessor. *Supra* ¶¶ 18-20. 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 its notice of appeal within 30 days from the Assessor's mailing of the assessment notice as required by Wyoming Statutes section 39-13-103(a)(v). *Supra* ¶¶ 6, 9, 12, 16.

23. The 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* ¶¶ 18-20, 22.

24. 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 Crook County Board of Equalization Decision and Order is reversed; and


IT IS FURTHER ORDERED that this matter is remanded to the Crook County Board of Equalization for 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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Joseph M. Baron
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cc: State Board;
Commissioners/Treasurer/Clerk - Crook County;
ABA State & Local Tax Reporter;