

BEFORE THE STATE BOARD OF EQUALIZATION

FOR THE STATE OF WYOMING

IN THE MATTER OF THE APPEAL OF)
CUMMINS ROCKY MOUNTAIN, LLC)
FROM A DECISION OF THE CAMPBELL) Docket No. **2011-85**
COUNTY BOARD OF EQUALIZATION)
2011 PROPERTY VALUATION)

DECISION AND ORDER

APPEARANCES

Todd Stevens, Stevens & Associates, Inc., appeared on behalf of Cummins Rocky Mountain, LLC (Taxpayer).

No appearance by Campbell County Assessor (Assessor).

DIGEST

This is an appeal from a decision of the Campbell County Board of Equalization (County Board) affirming the Assessor's valuation of Taxpayer's property for 2011 tax purposes. Taxpayer's Notice of Appeal was filed with the State Board effective August 16, 2011. Taxpayer filed a brief, as directed by the October 10, 2011, State Board Briefing Order. Assessor did not file a brief as directed by the State Board Briefing Order. No oral argument was requested.

The State Board of Equalization (State Board), comprised of Chairman Steven D. Olmstead, Vice-Chairman Deborah J. Smith, and Board Member Paul Thomas Glause, considered the County Board record and decision, and Taxpayer's brief.

We evaluate Taxpayer'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 and remand this matter for a new hearing.

ISSUES

Taxpayer did not state specific issues in its Notice of Appeal filed with the Board. However, Taxpayer made two general contentions:

First - whether Taxpayer was denied due process by the County Board when it was not allowed to appear at its hearing by telephone, and thus found by the County Board to have willfully neglected or refused to attend the hearing.

Second - whether the Assessor properly assessed Taxpayer's property in 2011.

[*Taxpayer's Opening Brief*].

The Assessor did not file a brief or any other written statement in this matter.

PROCEEDINGS BEFORE THE COUNTY BOARD

On July 13, 2011, Taxpayer, through its agent, Stevens and Associates, Inc., faxed a letter to the Campbell County Attorney's Office, which was addressed to the "Hearing Officers." The County Board treated the faxed letter as a motion to appear by telephone. The County Board contacted Taxpayer's representative, Todd Stevens, on July 14, 2011, the date and time of the scheduled appeal hearing, by telephone. Taxpayer did not appear in person. During the hearing the County Board denied the Taxpayer's representative's request to appear at the appeal hearing by telephone. No evidence was received on behalf of Taxpayer. The County Board entered its Findings of Fact Conclusions of Law Order on July 19, 2011, affirming the Assessor's 2011 valuation. [County Board Record, pp. 8, 12, and 16-18].

JURISDICTION

The State Board is required to "hear appeals from county boards of equalization." *Wyo. Stat. Ann. § 39-11-102.1(c)*. Taxpayer filed a timely appeal of the July 19, 2011, County Board decision with the State Board effective August 16, 2011. *Rules, Wyoming State Board of Equalization, Chapter 3 § 2*.

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. § 16-1-114(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, we look to precedent under Wyo. Stat. Ann. § 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 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).

We 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. Cummins Rocky Mountain, LLC, d/b/a Diverse Energy LLC, owns commercial property described as Prestige Park, Lot 5, located at 2600 E. Second Street, Gillette, Campbell County, Wyoming. [County Board Record, pp. 1-5, 21-23].
2. The Assessor mailed the Campbell County “2011 Notice of Assessment” to Taxpayer at P. O. Box 1052, Gillette, WY 82717, on or about April 15, 2011. [County Board Record, p. 23].
3. Taxpayer’s official appeal, “Statement to Contest Property Tax Assessment,” regarding its 2011 property assessment, was filed and shows a date stamp of the Campbell County Clerk of May 16, 2011. This statement was signed by Todd Stevens, under oath,¹ and dated April 22, 2011. [County Board Record, pp. 1-6]. Attached to the “Statement to Contest Property Tax Assessment” was a “Property Tax Consultant - Agency Agreement”, in which appeared printed near the bottom of the page “Please Direct all correspondence/refunds to: Stevens & Associates / Inc. 640 Plaza Dr., Suite 290 Littleton, Colorado 80129.” [County Board Record, p. 2].
4. The Campbell County Clerk prepared a letter, dated June 2, 2011, to Taxpayer, c/o Stevens & Associates, Inc., at 640 Plaza Drive, Suite 290, Littleton, Colorado, acknowledging receipt of the “Statement to Contest Property Tax Assessment for the 2011 tax assessment.” The letter notified Taxpayer the appeal hearing of its tax assessment was scheduled before the County Board on July 14, 2011, at 10:30 a.m. The letter was mailed and postmarked June 2, 2011, with a return address of the Campbell County Attorney’s Office. The letter was returned to the Campbell County Attorney’s Office as being “Not

¹ The oath requirement on the Statement to Contest Property Tax Assessment form is no longer required under Wyo. Stat. Ann. § 39-13-109(b)(i). The oath requirement was removed effective February 13, 1999. *1999 Wyo.Sess.Laws. Ch. 12.*

Deliverable As Addressed.” [County Board Record, pp. 8-9, County Board Hearing Recording of July 14, 2011].

5. The Campbell County Attorney’s Office mailed a letter, dated June 14, 2011, to Taxpayer, at 390 Interlocken Crescent, Suite 200, Broomfield, Colorado, providing another notice of the Campbell County Board of Equalization hearing. This address appeared as the “Owner” on the Property Tax Consultant - Agency Agreement, attached to Taxpayer’s “Statement to Contest Property Tax Assessment.” [County Board Record, p. 10; Hearing Recording].

6. Taxpayer, through its agent, Stevens and Associates, Inc., faxed a letter to the Campbell County Attorney’s Office on July 13, 2011, in which Todd Stevens requested to appear at the scheduled hearing by telephone. Taxpayer’s agent stated in the letter it received the notice of the hearing and other documents from the “County Appraiser” on July 11, 2011. In the faxed letter, Taxpayer’s representative admitted the notice and Assessor’s exhibits were sent to a “former address.” Taxpayer’s representative stated in the letter “due to the late notice and due to the fact we are located in Colorado, a representative from our office will not be able to attend the hearing in person.” [County Board Record, pp.11-12; Hearing Recording].

7. The County Board convened at 10:30 a.m. on July 14, 2011, to hear Taxpayer’s 2011 property assessment appeal. The County Board hearing officer placed a telephone call to Taxpayer’s agent. The County Board heard arguments from Taxpayer and Assessor regarding Taxpayer’s request to appear by telephone. The County Board hearing officer, Carol Seeger, Deputy County Attorney, advised the County Board that Taxpayer had been served with notice of the hearing by the Campbell County Attorney’s Office. The County Board briefly discussed the date the notice was served. The County Board denied Taxpayer’s request to appear by telephone. No evidence was received regarding the merits of Taxpayer’s appeal. Because neither the Taxpayer nor any representative of Taxpayer appeared in person at the hearing, the County Board denied and then dismisses Taxpayer’s appeal. [County Board Record, pp. 13-14, and 16-17; Hearing Recording].

8. The County Board issued its “Findings of Fact Conclusions of Law Order” concerning Taxpayer’s 2011 property assessment appeal on July 19, 2011. [County Board Record, pp.16-17].

9. Taxpayer appealed the County Board’s decision to the State Board. Taxpayer argued it was inappropriately denied the opportunity to appear by telephone before the County. [*Taxpayer’s Notice of Appeal; Taxpayer’s Opening Brief*].

10. Assessor did not file a brief, or any other written response in this matter.

DISCUSSION OF ISSUES AND APPLICABLE LAW

Applicable Law

11. The Wyoming Constitution, article 1, § 6, provides “[n]o person shall be deprived of life, liberty or property without due process of law.”

12. The Wyoming Supreme Court has held “notice and the opportunity to be heard are the touch stones of due process of law.” *Pecha v. Smith, Keller & Associates*, 942 P.2d 387, 391 (Wyo. 1997); *In re CS*, 2006 WY 130, ¶ 8, 143 P.3d 918, 922 (Wyo. 2006); *In re “H” Children*, 2003 WY 155, ¶ 38, 79 P.3d 997, 1008 (Wyo. 2003); *Mace v. Nocera*, 2004 WY 154, ¶ 18, 101 P.3d 921, 928 (Wyo. 2004).

13. The Wyoming Supreme Court has stated: “[p]rocedural due process requires reasonable notice and a meaningful opportunity to be heard before government action may substantially affect a significant property interest.” *Amoco Production Company v. Wyoming State Board of Equalization*, 7 P.3d 900, 905 (Wyo. 2000), quoting *Pfeil v. Amax Coal West, Inc.*, 908 P.2d 956, 961 (Wyo. 1995). *See also In re “H” Children*, 2003 WY 155, ¶ 38, 79 P.3d 997, 1008 (Wyo. 2003).

“While it is a principle so obvious that it has little attention in our jurisprudence, there can be no question that due process considerations are invoked in administrative proceedings. *ANR Production Co. v. Wyoming Oil and Gas Conservation Comm’n*, 800 P.2d 492 (Wyo.1990); *Jackson v. State ex rel. Wyoming Workers’ Compensation Div.*, 786 P.2d 874 (Wyo.1990). Certainly, a failure to follow the statutory procedures must be considered in determining whether a party has been afforded that process which is due.” *Amoco Production v. State Bd of Equalization*, 882 P.2d 866, 872 (Wyo. 1994). *Amoco Production Company v. Wyoming State Board of Equalization*, 7 P.3d 900, 905 (Wyo. 2000).

14. The Wyoming Supreme Court recognized due process is a flexible concept which calls for such procedural protections as the time, place and circumstances demand. In order to determine the specific dictates of due process in a given situation, it is necessary to balance three distinct factors: (1) the private interest that will be affected by the official action; (2) the risk of an erroneous deprivation of such interest through the procedures used, along with the probable value, if any, of additional or substitute procedural safeguards; and (3) the

government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirements would entail.

State of Wyoming, Department of Transportation v. Robbins, 2011 WY 23, ¶ 13, 246 P.3d 864, 866 (Wyo. 2011). (citations omitted).

15. The Wyoming Supreme Court expressed: “[a]ny attempt to ascertain the powers of an administrative agency must begin with the proposition that only those powers expressly conferred by the legislature are granted to an agency.” (citations omitted).

“Stated in another manner, an administrative body has only the power and authority granted by the constitution or statutes creating the same * * *. Such statutes must be strictly construed or ‘any reasonable doubt of existence of any power must be resolved against the exercise thereof’ * * *. (citations omitted.) *Tri-County Electric Association, Inc. v. City of Gillette*, 525 P.2d 3, 8-9 (1974).”

Hupp v. Employment Sec. Com’n, 715 P.2d 223, 225 (Wyo. 1986).

16. The Wyoming Supreme Court stated:

“An agency must limit its activities to those authorized by the legislature: It is axiomatic that an agency has and may properly exercise only those powers authorized by the legislature. 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 by law, that action is null and void.”

Wyoming Dept. of Revenue v. Guthrie, 2005 WY 79, ¶ 18, 116 P.3d 1086, 1093 (Wyo. 2005) quoting *Platte Dev. Co. v. State of Wyoming, Envtl. Quality Council*, 966 P.2d 972, 975 (Wyo. 1998). (citations omitted).

17. The Wyoming Supreme Court expressed “administrative agencies are bound to comply with their enabling statutes. (citations omitted). An administrative rule or regulation which is not expressly or impliedly authorized by statute is without force or effect if it adds to, changes, modifies, or conflicts with an existing statute. Conversely, a rule or regulation which is expressly or impliedly authorized by the enabling statute will be given force and effect.” *Diamond B Services, Inc. Rohde*, 2005 WY 130, ¶ 60, 120 P.3d 1031 (Wyo. 2005) (citing *Billings v. Wyo Bd. Of Outfitters and Guides*, 2001 WY 81 ¶ 24, 30 P.3d 557, 568-569 (Wyo. 2001). See, *BP America Production v. Dept. of Revenue*, 2006 WY 27, ¶ 28, 130 P.3d 438, 466-467 (Wyo. 2006).

18. The Wyoming Supreme Court has stated “[s]ubstantial evidence in this context means ‘such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.’” (citations omitted). The Court went on to say “findings of fact are supported by substantial evidence if, from the evidence preserved in the record, we can discern a rational premise for those findings.” *Bush v. State ex rel Wyo. Workers’ Comp. Div.*, 2005 WY 120, ¶ 5, 120 P.3d 176, 179 (Wyo. 2005). The Court expressed “the arbitrary and capricious stand is a “safety net” to catch agency action which prejudices a party’s substantial rights or which may be contrary to the other W.A.P.A. review standards yet is not easily categorized or fit to any one particular standard” (citations omitted). *Dale v. S & S Builders, LLC.*, 2008 WY 84, ¶ 23, 188 P.3d 554, 561 (Wyo. 2008). See, *Laramie County Sheriff’s Department v. Kenneth Cook*, 2012 WY 47, ¶¶ 11-12, 272 P.3d 966, at 969-970 (Wyo. 2012).

19. The Wyoming statutes concerning general procedures on contested cases provide in pertinent part:

(k) Every party shall be accorded the right to appear in person or by or with counsel or other duly qualified representative in any agency proceeding in accordance with the such rules as the agency prescribes and the pertinent rules of the supreme court. . . . Every agency shall proceed with reasonable dispatch to conclude any matter presented to it **except that due regard shall be had for the convenience and necessity of the parties or their representatives.** (Emphasis added).

* * *

(r) Findings of fact shall be based exclusively on the evidence and matters officially noticed.

Wyo. Stat. Ann. § 16-3-107(k) and (r).

20. The Wyoming statute concerning a final decision in contested cases provides in pertinent part:

A final decision or order adverse to a party in a contested case shall be in writing or dictated into the record. The final decision shall include findings of fact and conclusion of law separately stated. Findings of fact if set forth in statutory language, shall be accompanied by a concise and explicit statement of the underlying facts support the findings.

Wyo. Stat. Ann. § 16-3-110.

21. The Wyoming Supreme Court has stated:

“In discharging its duty under §16-3-110, the agency must make findings of basic facts upon all the material issues in the proceeding and upon which its ultimate findings of fact or conclusions are based. (citations omitted). This court needs to know why an agency decided the way it did. When an agency does not make adequate findings of basic fact, we do not have a rational basis upon which to review its ultimate findings and conclusions. (citations omitted). It is insufficient for an administrative agency to state only an ultimate fact or conclusion. Each ultimate fact or conclusion must be thoroughly explained in order for a court to determine upon what basis the ultimate fact or conclusion was reached. (citation omitted). When an agency does not set forth the reasons for its actions - that is, when its findings are conclusory - this Court cannot uphold its decision. (citations omitted).

Veile v. Bryant, 2004 WY 107, ¶ 22, 97 P.3d 787, 797-798 (Wyo. 2004).

22. The Wyoming statutes concerning the appeal of local assessment provide in pertinent part:

(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 assessment schedule. Any person wishing to contest an assessment of 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).

23. Section 15(a) of the Rules and Regulations of the Board of Equalization for the County of Campbell states:

“(a). The Appellant may represent himself/herself at the hearing, he/she may be represented by a person designated by the Appellant, or he/she may be represented by an attorney who is duly authorized to practice law in the State of Wyoming or is associated at the hearing with one or more attorneys authorized to practice law in the State of Wyoming. **No adjustment in an assessment will be granted to or on behalf of any person who willfully neglects or refuses to attend a meeting of the board and be examined or answer any material question upon the board's request.**”

Rules of Practice and Procedure for Appeals Before the Campbell County Board of Equalization, § 15(a) (2004). (Emphasis added).

24. Willful neglect is defined as: “Intentional or reckless failure to carry out a legal duty.” *Black's Law Dictionary, p. 1061 (8th Ed. Thomson West, 2004).*

25. Intentional is defined as: “Done with the aim of carrying out the act.” *Black's Law Dictionary, p. 826 (8th Ed. Thomson West, 2004).*

26. “Reckless conduct is much more than mere negligence: it is a gross deviation from what a reasonable person would do.” *Black's Law Dictionary, p. 1298 (8th Ed. Thomson West, 2004).*

27. The Wyoming Administrative Procedure Act provides in pertinent part: “In any contested case, all parties shall be afforded an opportunity for hearing after **reasonable notice served** personally or by mail.” *Wyo. Stat. Ann. § 16-3-107(a)* (emphasis added).

28. Reasonable notice is defined as: “notice that is fairly to be expected or required under the particular circumstances.” *Black’s Law Dictionary*, p. 1091 (8th Ed. Thomson West, 2004).

Discussion

29. Taxpayer received its 2011 property assessment notice. Taxpayer’s representative timely filed a protest with the Assessor. Two separate notice of the County Board hearing schedule was mailed to Taxpayer’s representative by county officials. *Supra*, ¶¶ 1-2, 4-5.

30. On July 13, 2011, Taxpayer’s representative faxed a request to appear by telephone for the appeal hearing to the Campbell County Attorney’s Office. Taxpayer’s representative asserted in the faxed letter to the County Board that on July 11, 2011, it received notice of the hearing scheduled before the County Board in the matter of the 2011 property tax assessment appeal scheduled for July 14, 2011, due to improper addresses listed on the forms provided by Taxpayer’s representative. *Supra*, ¶¶ 3, 6.

31. The County Board treated the representative’s letter as if it were a motion and initiated a telephone hearing on July 14, 2011. The telephone hearing with Taxpayer’s representative was at the time scheduled for Taxpayer’s appeal hearing. The County Board denied Taxpayer’s request to appear by telephone during the hearing. The representative for Taxpayer, who was already on the telephone for the motion hearing, was informed of the denial to appear by telephone for the purposes of the appeal hearing, and because he was not present in person, nor anyone else on behalf the Taxpayer, the appeal would be denied. No evidence was presented by either the Taxpayer or the Assessor during the County Board hearing in his matter. The only information provided to the County Board by Taxpayer was its “Statement to Contest Property Tax Assessment.” *Supra*, ¶¶ 6-7.

32. The County Board concluded in its *Findings of Fact Conclusions of Law Order* that Taxpayer willfully neglected or refused to attend its tax appeal hearing, following the County Board’s decision to deny Taxpayer’s appearance by telephone, because no one was present at the hearing in person to represent the Taxpayer. The County Board dismissed and denied Taxpayer’s appeal. *Supra*, ¶¶ 7-8.

33. This Board notes the Campbell County Board of Equalization Rules of Practice and Procedure for Appeals, particularly Section 15, do not address or provide guidance regarding hearings conducted by telephone or by other means, such as video conferences. However, Section 15 of the County Board rules states a person who willfully neglects or refuses to attend a hearing will not be granted any adjustment in an assessment. *Supra*, ¶ 23.

34. It is also noted the Assessor made no appearance before the State Board and provided no briefing material, legal authority or cogent argument regarding or supporting the ability of the County Board to dismiss and deny Taxpayer's appeal on the grounds Taxpayer willfully neglected or refused to appear at the contested hearing. *Supra*, ¶ 10, and *State Board Record*.

35. Taxpayer's representative requested to appear by telephone and provided notice of its necessity to appear by telephone to the County Board through its faxed letter to the County Attorney's Office. Although the representative's letter was received by the County Board only a day before the hearing and unnecessarily late, no where in written motion, or stated by Taxpayer during the short telephone hearing with the County Board on Taxpayer's motion did the representative refuse to appear before the County Board. Taxpayer's representative seemed ready to proceed with the tax assessment appeal hearing, as he was already on the telephone and knew the appeal hearing was set for that time and date. *Supra*, ¶¶ 6-7.

36. As a matter of law, parties involved in an administrative contested case, as is this matter, are entitled to a reasonable notice of the setting of hearing. *Wyo. Stat. Ann. § 39-13-109(b)(i)*; *Wyo. Stat. Ann. § 16-3-107*. *Supra*, ¶¶ 12-14.

37. The County Board mailed two notices to Taxpayer. However, the first notice was not received by Taxpayer due to an incorrect address provided by Taxpayer's representative. The second notice was sent from the County Attorney's Office and mailed to another address which was not the Taxpayer's representative's address. Not for the County Board fault or the lack of trying to give notice to Taxpayer of the hearing schedule in a timely manner, there were a series of missteps resulting in Taxpayer's representative only receiving notice three days before the hearing. *Supra*, ¶¶ 3-6, 27-28.

38. The County Board, during its motion hearing regarding Taxpayer's request to appear by telephone, considered the short notice of the hearing provided to Taxpayer, but summarily denied Taxpayer's representative to appear by phone at the appeal hearing. At no time was there any evidence, let alone substantial evidence, presented to the County Board that Taxpayer refused or willfully neglected to appear for the appeal hearing. To the contrary, Taxpayer's representative wanted to appear by telephone for the appeal hearing and was ready to do so. There was no evidence in the record, facts, or findings nor any other basis in fact for the County Board to conclude, as it did in the *Finding of Facts Conclusions of Law Order*, Taxpayer willfully neglected or refused to attend the hearing before the County Board of Equalization. The County Board provided no reason or explanation for its denial, as well as no explanation how Taxpayer had willfully neglected or refused to attend the appeal hearing. The County Board's decision did not comport with *Wyo. Stat. Ann. § 39-13-*

109(b)(i), nor with the County Board rules in finding Taxpayer willfully neglected or refused to appear at the appeal hearing. *Supra*, ¶¶ 6-8, 15-26.

39. The County Board disregarded Taxpayer's due process rights, by disposing of the matter by determining Taxpayer willfully neglected or refused to attend the appeal hearing. Taxpayer should be allowed a hearing on the merits of the appeal and to present evidence, if any, in support of its appeal, with reasonable notice and with an opportunity to be heard at a new hearing. *Supra*, ¶¶ 8-9, 11-17, 27-28.

40. The only adequate remedy for the failure of providing Taxpayer due process such as occurred at the County Board hearing is to vacate the County Board Findings of Fact and Conclusion Order of July 19, 2011, and remand this matter to the County Board for Taxpayer to have an opportunity to present its case. *Supra*, ¶¶ 11, 16.

41. The County Board proceedings regarding Taxpayer's challenge of the 2011 valuation of its property was arbitrary, capricious, an abuse of discretion or otherwise not in accordance with law, therefore, consideration of any remaining issues raised by Taxpayer to the State Board are unnecessary.

THIS SPACE INTENTIONALLY LEFT BLANK

ORDER


IT IS THEREFORE HEREBY ORDERED the Campbell County Board of Equalization's Findings of Fact Conclusions of Law Order, dated July 19, 2011, affirming the Assessor's 2011 valuation of Taxpayer's property is **vacated**, and this matter **remanded** to the Campbell County Board of Equalization for further proceedings as required.

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 20 day of May, 2012.

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 2nd day of May, 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:

Todd J. Stevens
Stevens & Associates
9800 Mt Pyramid Court. Ste. 220
Englewood CO 80112

Troy Clements
Campbell County Assessor
Campbell County Courthouse
500 South Gillette Avenue, Suite 1300
Gillette WY 82716.



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: State Board;
Commissioners/Attorney/Treasurer/Clerk - Campbell County;
ABA State & Local Tax Reporter;