

BEFORE THE STATE BOARD OF EQUALIZATION
FOR THE STATE OF WYOMING

IN THE MATTER OF THE APPEAL OF)
DUNCAN E. AND PAMELA L.)
GOLDIE-MORRISON FROM A DECISION) Docket No. **2011-88**
OF THE TETON COUNTY BOARD OF)
EQUALIZATION - 2011 PROPERTY)
VALUATION)

DECISION AND ORDER

APPEARANCES

Andrea Richard, The Richard Law Firm, P.C., and W. Perry Dray, Dray, Dyekman, Reed & Healey, P.C., appeared on behalf of Duncan E. and Pamela L. Goldie-Morrison (Taxpayers). Argument by Mr. Dray.

Keith M. Gingery, Deputy Teton County and Prosecuting Attorney, appeared on behalf of the Teton County Assessor (Assessor), Dawn Johnson.

DIGEST

The Taxpayers appealed the decision of the Teton County Board of Equalization (County Board) affirming the Assessor's valuation of Taxpayers' property for 2011 tax purposes.

The State Board, comprised of Chairman Steven D. Olmstead, Vice Chairman Deborah J. Smith, and Board Member Paul Thomas Glause considered the County Board record, the decision of the County Board, the Taxpayers' Notice of Appeal, the Taxpayers' Appeal Brief, the Brief of the Teton County Assessor, and the parties' oral arguments. The Taxpayers' Reply Brief was not considered because it was not timely filed.

The State Board evaluates Taxpayers' 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.*

The State Board reverses the decision of the County Board and remands this matter for a new hearing.

ISSUES

The Taxpayers presented the following issues on appeal:

1. Did the Assessor and in turn the Teton County Board of Equalization err in assigning a 139% increase in value of a home in a substantially declining real estate market?
2. Did the Assessor and the Teton County Board of Equalization err by changing the classification of a home to a two story when the home was built and previously classified by Teton County as a one-story with a basement and when there had not been any significant improvements made to the home?
3. Did the Assessor and the Teton County Board err by changing the construction quality classification of a home by four grades when there had been no significant improvements to the home since it was built in 2007?
4. Did the Teton County Board abuse its discretion and violate the law by basing its decision on surprise evidence, admitted over objection, contrary to Wyo. Stat. 39-13-109(b)(i), which requires that hearing evidence be designated at least fifteen (15) days prior to the scheduled county board equalization hearing?

[Taxpayers' *Appeal Brief*, pp. 6-7].

The Assessor restated the issues:

1. Whether the County Assessor determined the fair value of the improvements properly?
2. Whether evidence was admitted properly by the hearing examiner?

[*Brief of the Teton County Assessor*, p. 1].

PROCEEDINGS BEFORE THE COUNTY BOARD

By resolution the County Board hired an attorney to act as the hearing officer to hear the 2011 assessment appeals. The resolution further stated the hearing officer was to provide written findings and conclusions along with recommendations to the County Board by August 1, 2011. [County Board Record, p. 6]. The hearing officer conducted a hearing in this matter on July 26, 2011, and July 28, 2011. [County Board Record, pp. 1, 49-55; Transcript Vol. I & II]. The hearing officer submitted his proposed findings of fact, conclusions of law and recommendations to the County Board on August 1, 2011, and the County Board ratified the recommendations of the hearing officer on the same date. [County Board Record, pp. 70–81, 74a-75a]¹.

JURISDICTION

The State Board is required to “hear appeals from county boards of equalization.” *Wyo. Stat. Ann. § 39-11-102.1(c)*. On August 29, 2011, the Taxpayers filed a timely notice of appeal of the County Board decision with the State Board. *Rules, Wyoming State Board of Equalization, Chapter 3 § 2*. The Taxpayers and Assessor filed briefs as allowed by the October 27, 2011, State Board Briefing Order. The Taxpayers requested a “hearing” in their Notice of Appeal and the State Board heard oral arguments on February 9, 2012.

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*,

¹The Decision of Teton County Board of Equalization is contained in the County Board Record at pages 70-81. However, the documents in the County Board Record following the last page of the Decision of Teton County Board of Equalization, are also numbered 71-75. The second set of pages numbered 71-75 will be referred to herein as 71a-75a.

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)).*

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 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 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, the State Board looks to precedent under Wyoming Statutes § 16-3-114(c) for guidance. For example, the State Board must apply this substantial evidence standard:

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

more than a scintilla of evidence; it is evidence that a reasonable mind might accept in support of the conclusions of the agency.” *Id.*

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

The State Board reviews the findings of ultimate fact of a county board 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); *quoted in Britt v. Fremont County Assessor*, 2006 WY 10, ¶ 17, 126 P.3d 117, 123 (Wyo. 2006).

The State Board also applies 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 residential property located at 160 W. Calliope Drive in Teton County, Wyoming. The legal description of the property is Lot 42, Elk Dance Estates 4th Filing, Teton County, Wyoming. [County Board Record, pp. 4-5, 7, 42].

2. The Assessor mailed the 2011 Notice of Assessment to Taxpayers for their property on April 22, 2011. [County Board Record, p. 4].
3. Taxpayers appealed the Assessor's valuations of their property and improvements to the County Board by filing an Official Appeal of Assessment on May 20, 2011. [County Board Record, p. 5].
4. On June 14, 2011, Sherry L. Daigle, Teton County Clerk, sent notice to the Taxpayers by certified mail that their appeal was scheduled to be heard before the County Board on July 26, 2011, at 4:30 p.m. [County Board Record, pp. 1-3].
5. The County Board passed a resolution on July 11, 2011, appointing a "Hearing Officer to hear all of the 2011 Assessment Appeals." The resolution further provided the "[hearing officer] shall deliver written Findings and Conclusions along with recommendations, no later than August 1, 2011." [County Board Record, pp. 6].
6. The hearing officer called the hearing on Taxpayers' appeal to order at 5:45 p.m. on July 26, 2011. Present were Dawn Johnson, Teton County Assessor, Keith Gingery, Deputy Teton County Attorney, Sherry Daigle, Teton County Clerk, Andrea Richard, attorney for Taxpayers and Judy Raymond, a witness for Taxpayers. Taxpayer, Pamela L. Goldie -Morrison, appeared by phone. The hearing continued until 8:57 p.m., at which time it was declared in recess. The hearing was reconvened by phone at 10:30 a.m. on July 28, 2011. Participating in the phone hearing were Sherry Daigle, Keith Gingery, Iris Jaspersen, Deputy Teton County Assessor, Andrea Richard and Pamela L. Goldie-Morrison. [County Board Record, pp. 49-55; Transcript Vol. I & II].
7. The record does not reflect the presence of any members of the Teton County Board of Equalization during the hearing.
8. The hearing officer prepared a written Decision of Teton County Board of Equalization, which contained Findings of Fact and Conclusions of Law, together with a recommendation to the Teton County Board of Equalization to affirm the Teton County Assessor's valuation of Taxpayers' property. The hearing officer signed the document on August 1, 2011, but there was no certificate of service or other indication that it was sent to the Taxpayers or their attorney. [County Board Record, pp. 70-80].
9. On Friday, July 29, 2011, Sandy Birdyshaw, Deputy Teton County Clerk, e-mailed the Commissioners' agenda for the following week to a group of people. Andrea Richard, attorney for Taxpayers, was listed among those to receive the e-mail. Included in the agenda was a Special Meeting of the Board of Equalization at 9:30 a.m. on Monday,

August 1, 2011, for “consideration of the hearing officer’s written findings and conclusions, provided for each appeal hearing conducted between July 18 and July 28, 2011.” [County Board Record, pp. 71a–73a].

10. The Official Proceedings of the Board of County Commissioners, Teton County Wyoming, reflect their meeting was called to order at 9:30 a.m. on August 1, 2011. Commissioners Ben Ellis, Andy Schwartz, Hank Phibbs, Paul Perry and Paul Vogelheim were present together with Sherry Daigle, Dawn Johnson, Keith Gingery and Sandy Birdyshaw. The hearing officer participated by phone. The minutes state, “[t]here was discussion amongst the board and [the hearing officer] regarding procedure, the scope of public comment and the next step. [The hearing officer] stated that since during each hearing every opportunity was given to hear all sides he recommended to not open the hearings since it was specifically stated the hearing was closed at the end of each.” [County Board Record, p. 74a-75a].

11. The County Board then proceeded to consider sixteen appeals individually. The meeting was adjourned forty-four minutes later at 10:14 a.m. The Taxpayers’ appeal was among those considered by the County Board on August 1, 2011. There was a motion and second to adopt the hearing officer’s Findings of Fact and Conclusions of Law, and to affirm the Assessor’s valuation of the Taxpayers’ property. [County Board Record, pp. 74a-75a].

12. The Decision of Teton County Board of Equalization was entered by the County Board on August 1, 2011, the same day it was submitted by the hearing officer. [County Board Record, pp. 70-81].

APPLICABLE LAW AND DISCUSSION OF ISSUES

Applicable Law

13. The Wyoming Constitution, article 15, §11(b), provides in pertinent part: “[a]ll taxable property shall be valued at its full value as defined by the legislature except agricultural and grazing lands which shall be valued according to the capability of the land to produce agricultural products under normal conditions.”

14. The Wyoming Constitution, article 15, §11(d), requires “[a]ll taxation shall be equal and uniform within each class of property. The legislature shall prescribe such regulations as shall secure a just valuation for taxation of all property, real and personal.”

15. 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).

16. The Legislature requires all property in Wyoming to be valued annually at fair market value. *Wyo. Stat. Ann. § 39-13-103(b)(ii)*.

17. 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); 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)*.

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

19. The role of the County Board when reviewing an Assessor’s valuation is equivalent to the State Board role when it reviews a decision of the Department of Revenue.

It is only by either approving the determination of the Department [Assessor], or by disapproving the determination and remanding the matter to the Department [Assessor], that the issues brought before the [County] Board for review can be resolved successfully without invading the statutory prerogatives of the Department [Assessor].

Amoco Production Company v. Wyoming State Bd. of Equalization, 12 P.3d 668, 674 (Wyo. 2000).

20. 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); See: *In re CS*, 2006 WY 130, ¶ 8, 143 P.3d 918, 922 (Wyo. 2006); *Mace v. Nocera*, 2004 WY 154, ¶ 18, 101 P.3d 921, 928 (Wyo. 2004); *In re “H” Children*, 2003 WY 155, ¶ 38, 79 P.3d 997, 1008 (Wyo. 2003).

21. The Wyoming Supreme Court has stated: “[p]rocedural due process principles require 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).

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. Wyoming State Board of Equalization, 882 P.2d 866, 872 (Wyo. 1994).

22. The Wyoming Supreme Court has recognized that due process is a flexible concept.

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).

23. 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 “[t]he arbitrary and capricious standard remains 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.” *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, 970 (Wyo. 2012).

24. Wyoming Statute § 39-13-102(c) provides:

(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 later 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 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 assessments 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** (emphasis added).

25. Wyoming Statute § 16-3-112(a) and (b) provide:

(a) If not otherwise authorized by law there shall preside at the taking of evidence in all contested cases the statutory agency, one (1) or more members of the body which comprises the agency, or an employee of the agency or an employee of another agency designated by the agency to act as presiding officer. The functions of all those presiding in contested cases shall be conducted in an impartial manner. Any officer shall at any time withdraw if he deems himself disqualified provided there are other qualified presiding officers available to act.

(b) Officers presiding at hearings shall have authority subject to the published rules of the agency and within its power to:

- (i) Administer oaths and affirmations;
- (ii) Issue subpoenas;
- (iii) Rule upon offers of proof and receive relevant evidence;
- (iv) Take or cause depositions to be taken in accordance with the provisions of this act and the rules of the agency;
- (v) Regulate the course of the hearing;
- (vi) Hold conferences for the settlement or simplification of the issues;
- (vii) Dispose of procedural requests or similar matters;
- (viii) **Make recommended decisions when directed to do so by the agency;** and
- (ix) Take any other action authorized by agency rules consistent with this act (emphasis added).

26. “[I]t is a fundamental rule of statutory interpretation that all portions of an act must be read in pari materia, and every word, clause, and sentence must be construed so that no part is inoperative or superfluous.” *Deloges v. State ex rel. Wyo. Workers’ Compensation Division*, 750 P.2d 1329, 1331 (Wyo. 1988). *State, ex rel. Wyo. Workers’ Safety and Compensation Div. v. Singer*, 2011 WY 57, ¶ 12, 248 P.3d 1155, 1159 (Wyo. 2011). *Hamlin v. Transcon Lines*, 701 P.2d 1139, 1142 (Wyo. 1985).

27. The Wyoming Supreme Court addressed the question of whether or not the agency officials responsible to make an ultimate decision must be present when evidence is received.

It seems to be the appellee's position that adjudicatory action by an agency is, for some unexplained reason, violative of due process if the agency officials whose responsibility it is to make the ultimate decision are not present when the evidence is received. This contention was rejected

long ago by the United States Supreme Court in *Morgan v. United States*, 298 U.S. 468, 56 S.Ct. 906, 80 L.Ed. 1288 (1936) (Morgan I). In that case, it was established that deciding officers need not take evidence and all that is required is that they understand the evidence before rendering a decision. See: 3 Davis, *Administrative Law Treatise*, § 17:2, p. 280-281, (2nd Ed. 1980). The general rule is that due process is satisfied as long as the deciding officials understand and consider the evidence before rendering a decision. *White v. Board of Education*, 54 Haw. 10, 501 P.2d 358 (1972); *Matter of University of Kansas Faculty*, 2 Kan.App.2d 416, 581 P.2d 817 (1978); *Application of Puget Sound Pilots Association*, 63 Wash.2d 142, 385 P.2d 711 (1963); *Pettiford v. South Carolina State Board of Education*, 218 S.C. 322, 62 S.E.2d 780 (1950). ...

* * *

Here, the record reflects that at the time appellees requested a hearing the members of the State Board of Education had had substantial contact with the case and, in order to insure a full measure of fairness, they appointed an independent hearing officer to conduct the hearing. The record also reflects that the hearing was conducted openly and fairly with each party being permitted to introduce evidence and to conduct direct examination and cross-examination over a three-day time span. Finally, the record plainly supports the fact that the Board met and carefully apprised itself of the contents of the hearing record before rendering its decision. We therefore conclude that the appellee has been afforded his due-process rights in full measure.

Wyoming State Depart. of Educ. v. Barber, 649 P.2d 681, 688 (Wyo. 1986) (footnotes omitted).

28. Specially concurring in *Wyoming State Depart. of Educ. v. Barber*, *Id.* at 693, Justice Rooney stated “emphasis should be given to the necessity for the decision to be made by the responsible officer or agency and not by the hearing officer.”

29. Wyoming Statutes § 16-3-109 states:

The agency shall consider the whole record or any portion stipulated to by the parties. **In the event a recommended decision is rendered all parties shall be afforded a reasonable opportunity to file exceptions thereto which shall be deemed a part of the record.** All parties as a matter of right shall be permitted to file a brief with the agency and oral argument shall be allowed in the discretion of the agency (emphasis added).

30. The federal Administrative Procedure Act is similar to the Wyoming Administrative Procedure Act regarding the filing of exceptions to a recommended decision. 5 USCA § 557(c) states:

- (c) Before a recommended, initial, or tentative decision, or a decision on agency review of the decision of subordinate employees, the parties are entitled to a reasonable opportunity to submit for the consideration of the employees participating in the decisions--
 - (1) proposed findings and conclusions; or
 - (2) **exceptions to the decisions or recommended decisions of subordinate employees or to tentative agency decisions** (emphasis added); and
 - (3) supporting reasons for the exceptions or proposed findings or conclusions.

The record shall show the ruling on each finding, conclusion, or exception presented. All decisions, including initial, recommended, and tentative decisions, are a part of the record and shall include a statement of--

- (A) findings and conclusions, and the reasons or basis therefor, on all the material issues of fact, law, or discretion presented on the record; and
- (B) the appropriate rule, order, sanction, relief, or denial thereof.

31. The United States Court of Appeals for the District of Columbia discussed a parties right to file exceptions to a hearing officer's recommended decision.

Finally, petitioner contends that DEA violated 5 U.S.C. § 557(c) (1976) through its failure to provide by regulation an opportunity to file exceptions to the ALJ's decision prior to final determination by the Administrator. We agree with petitioner that DEA is required to provide an opportunity to file exceptions with the Administrator, even though petitioner had an opportunity to present proposed findings of fact to the ALJ. The purpose of § 557(c) is to permit parties' input at each level of the administrative decisional process. This right is unfulfilled if the party may present its views only at one level (in this case, before the ALJ).

Klinestiver v. Drug Enforcement Administration, 606 F.2d 1128, 1130, 196 U.S. App.D.C. 221, 223 (C.A.D.C. 1979).

Discussion

32. The State Board must consider whether the Taxpayers' due process rights were violated. A failure to follow statutory procedures must be considered in determining whether a party has been afforded that process which was due. *Supra*, ¶¶ 7-8, 10-12, 20-23.
33. The State Board applies the arbitrary and capricious standard as a "safety net" in reviewing County Board actions which might violate the Wyoming Administrative Procedures Act. Under the arbitrary and capricious standard, the State Board must review a County Board decision for inconsistent or incomplete findings of fact or any violation of due process. *Supra*, ¶¶ 7-12, 20-23.
34. Wyoming Statutes § 39-13-102(c) states among other things that a county board of equalization shall "[h]ear and determine the complaint of any person relative to any property assessment or value" and "[d]ecide all protests heard." The statutory language raises a question whether the members of the county board must be present when the evidence is received. That question was considered by the United States Supreme Court in *Morgan v. United States*, 298 U.S. 468, 56 S.Ct. 906, 80 L.Ed. 1288 (1936) (Morgan I). In that case, it was established that deciding officers need not take evidence and all that is required is that they understand the evidence before rendering a decision. The general rule is that due process is satisfied as long as the deciding officials understand and consider the evidence before rendering a decision. *Supra*, ¶¶ 6-7, 10-12, 19, 24-27.
35. The Wyoming Supreme Court also addressed the issue in *Wyoming State Depart. of Educ. v. Barber*, 649 P.2d 681, 688 (Wyo. 1986), The Court found "the record plainly supports the fact that the Board met and carefully apprised itself of the contents of the hearing record before rendering its decision." *Supra*, ¶¶ 7, 27-28.
36. However, the record in this matter does not support a determination that the County Board carefully considered the evidence before rendering their decision. The record reflects the County Board met for a total of forty-four minutes on August 1, 2011, during which time they considered sixteen appeals. The short duration of time devoted to these cases calls into question how carefully the County Board was "apprised" of the record before they rendered their decision. *Supra*, ¶¶ 7, 11-12, 27-28.
37. The record reflects that the hearing officer submitted his Findings of Fact and Conclusion of Law, together with his recommendation to affirm the Teton County Assessor's valuation to the County Board on August 1, 2011. During their meeting on August 1, 2011, the County Board adopted the hearing officers Findings of Fact and

Conclusions of Law, and entered the Decision of the Teton County Board of Equalization on the same date. *Supra*, ¶¶ 5, 8-9, 11-12.

38. The requirements of Wyoming Statutes § 16-3-109 are also of concern. This statute mandates “[i]n the event a recommended decision is rendered all parties shall be afforded a **reasonable opportunity** to file exceptions thereto.” The federal Administrative Procedure Act contains similar language. 5 USCA § 557(c) provides “the parties are entitled to a **reasonable opportunity** to submit . . . exceptions to the decisions or recommended decisions of subordinate employees.” *Supra*, ¶¶ 8, 12, 25, 29-31.

39. What constitutes a reasonable opportunity is not defined, but at least some opportunity to file exceptions must be provided. There was no indication the hearing officer’s recommended decision was ever served on the parties. The hearing officer’s recommended decision was submitted to the County Board on the same day the County Board’s order was entered. Clearly, the Taxpayers did not have a reasonable opportunity to file any exceptions to the recommended decision. *Supra*, ¶¶ 8, 12, 25, 29-31.

40. In *Klinestiver v. Drug Enforcement Administration*, 606 F.2d 1128, 1130, 196 U.S. App.D.C. 221, 223, the United States Court of Appeals for the District of Columbia explained the “purpose of § 557(c) [requirement allowing submission of proposed findings or exceptions] is to permit parties’ input at each level of the administrative decisional process.” Since the members of the County Board did not personally receive the evidence, and the record fails to show they carefully reviewed the record, it is vital the Taxpayers be given an opportunity to make exceptions to the hearing officers recommended decision. *Supra*, ¶¶ 7-8, 12, 30-31.

41. In a specially concurring opinion, Wyoming Supreme Court Justice Rooney stated “emphasis should be given to the necessity for the decision to be made by the responsible officer or agency and not by the hearing officer.” *Wyoming State Depart. of Educ. v. Barber*, 649 P.2d 681, 693 (Wyo. 1986). In this matter it is unclear whether the ultimate decision was made by the County Board or the hearing officer. *Supra*, ¶¶ 7, 11-12, 27-28.

42. The County Board disregarded Taxpayers’ due process rights by failing to carefully consider the record and failing to follow statutory procedures. *Supra*, ¶¶ 7-12, 20-23, 25, 29, 39.

43. The County Board proceedings regarding Taxpayers’ challenge of the 2011 valuation of their property was arbitrary and capricious, or otherwise not in accordance with law, therefore, consideration of any other issues raised by Taxpayers are not necessary at this time. *Supra*, ¶¶ 7-12, 20-23, 25-29.

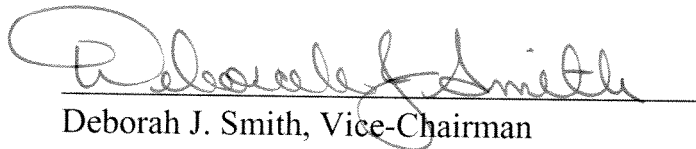
ORDER

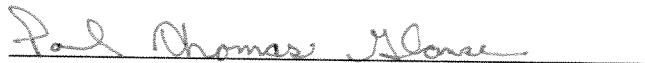
IT IS THEREFORE HEREBY ORDERED the Decision of Teton County Board of Equalization affirming the Assessor's 2011 valuation of Taxpayers' property is **vacated**, and this matter is **remanded** to the Teton County Board of Equalization for further proceedings as required.

DATED this 31st day of July, 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 31st day of July, 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:

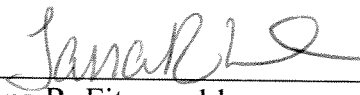
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Marvin Applequist, Property Tax Division, Department of Revenue
Commission/Treasurer/Clerk - Teton County
CCH
ABA State and Local Tax Reporter
State Library
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