

BEFORE THE STATE BOARD OF EQUALIZATION
FOR THE STATE OF WYOMING

IN THE MATTER OF THE APPEAL OF)
FRED REYNOLDS FROM)
A DECISION OF THE PARK COUNTY) Docket No. **2011-91**
BOARD OF EQUALIZATION - 2011)
PROPERTY VALUATION)

DECISION AND ORDER

APPEARANCES

Fred Reynolds (Taxpayer or Petitioner), was self-represented.

Pat Meyer, Park County Assessor, and James F. Davis, Deputy Park County Attorney, appeared on behalf of Park County Assessor (Assessor or Respondent).

DIGEST

This is an appeal from a decision of the Park 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 of Equalization effective August 24, 2011. Both Taxpayer and Assessor filed briefs, as permitted by the October 12, 2011, State Board Briefing Order.

The State Board of Equalization (State Board), comprised of Steven D. Olmstead, Chairman, Deborah J. Smith, Vice-Chairman, and Paul Thomas Glause, Board Member, considered the parties' filings, the hearing record, and the decision of the County Board. Oral argument was not requested by either party.

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 affirm the “Final Decision” of the County Board affirming the Assessor’s 2011 valuation of Taxpayer’s property.

ISSUES

Taxpayer raised four contentions in his Notice of Appeal and Opening Brief:

First, whether the house on his property was correctly classified by the Assessor as a “purged mobile home.”

Second, whether the Assessor was improperly using the “replacement cost new” (RCN) in assessing his property and not a fair market value.

Third, whether the Assessor improperly used the Marshall and Swift values in the assessment of his property.

Fourth, whether the Assessor utilized a correct analysis in raising the value of his property when considering the non-existence of sagebrush on his property.

[Taxpayer’s Notice of Appeal and Opening Brief].

The Assessor stated five issues in Respondent’s Brief:

First, whether Petitioner’s property is a “purged mobile home.”

Second, whether Petitioner’s property was assessed for 2011 at a substantially higher rate than other “purged mobile homes” in Park County.

Third, whether the Assessor’s use of Replacement Cost New in assessing Petitioner’s property is a valid method of valuation.

Fourth, whether it was proper for the Assessor to utilize Marshall and Swift cost tables in assessing Petitioner’s property.

Fifth, whether an increase in Petitioner’s land valuation was based on the Assessor’s discovery that no sagebrush exists on the property.

[Assessor’s Response Brief].

PROCEEDINGS BEFORE THE COUNTY BOARD

The County Board conducted a hearing on July 20, 2011, at which Taxpayer and Assessor each testified and presented exhibits. The County Board entered its Final Decision on July 28, 2011, affirming the Assessor’s 2011 fair market value for Taxpayer’s property and

denying any adjustment of the assessed valuation. [County Board Record, pp. 7, 19, 168-184].

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 28, 2011, County Board decision with the State Board effective August 24, 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 Electric Power Coop., 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).

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. Fred Reynolds owns residential property located at 12 Bartlett Lane, Cody, Park County, Wyoming. [County Board Record, pp. 1-4, 8, 20, 82, 103-104, 183].
2. The Assessor mailed the Park County “2011 Notice of Assessment” to Taxpayer on April 8, 2011. [County Board Record, pp. 82, 168].
3. On April 28, 2011, Taxpayer filed a “Statement to Contest Property Tax Assessment,” appealing his 2011 property tax assessment. Taxpayer referred to his 2010 tax appeal statement and attached it to his 2011 appeal. [County Board Record, pp. 7-17, 20].
4. Both Taxpayer and Assessor appeared at the protest hearing. Each provided sworn testimony and presented exhibits. Taxpayer read from a written letter, which was admitted as Exhibit 5. There were no other witnesses. [County Board Record, pp. 24-78, 103-104, 183-184].
5. Taxpayer’s property was described as a residential “purged mobile home” on 3.97 acres in Park County Tax District 606 and located within LEA (land economic area) S6, on the South Fork. [County Board Record, pp. 1-4, 24, 51-53, 82-86].
6. Taxpayer asserted his property was over-valued and should have been compared to other properties located in his “tax area” as well as properties in other tax areas of the county

to reach the fair market value. He argued that his home should have been compared to mobile homes similar in construction to his home. In addition to his written statement, which was admitted as Exhibit 5, Taxpayer presented Exhibits 2, 3, 4, and 7 as properties that should have been used to establish a fair market value for his property. [County Board Record, pp. 20-22, 24-36, 61-63, 87-104, 110-111].

7. Taxpayer questioned the difference in acreage values of the properties presented in his exhibits and the value the Assessor determined for his acreage. Mr. Reynolds believed his land was unfairly over-valued by the Assessor and should be valued the same as the property in Exhibits 4 and 7. [County Board Record, pp. 20-22, 24-36, 61-63, 97-102, 110-111].

8. Mr. Reynolds asserted his “1965¹ purged mobile home” on his property should have been valued only as a single wide mobile home, rather than a “stick-built one story ranch” type structure, even though there were built-on additions made to the original mobile home structure. He disagreed the structure was a “purged mobile home.” [County Board Record, pp. 20-22, 24-36, 61-63, 82-86].

9. Mr. Reynolds opined his property was no better than other properties in Park County and should have been valued the same as the properties provided in Exhibits 2, 3, and 4. Taxpayer argued the cost per square foot difference among the buildings on the properties presented in his exhibits demonstrated the Assessor was arbitrary and capricious in the analysis for the fair market value of his property. Taxpayer argued the “Replacement Cost New” (RCN) method of appraisal was improper and not a fair market value. Taxpayer argued his assessment did not provide sufficient depreciation of his home, as compared to the three other properties listed in his exhibits. Mr. Reynolds admitted, however, he added additional out-buildings on his property, which would cause an increase in market value over the past year’s appraisal. [County Board Record, pp. 20-22, 25-36, 61-63, 87-102].

10. Taxpayer’s Exhibit 2 was a one-page Multiple Listing Service (MLS) document pertaining to a one story - three bedroom and two bath home that was for sale. The exhibit had four additional pages of the Assessor’s tax records pertaining to the MLS property. The

¹ Assessor’s tax records pertaining to Taxpayer’s property indicated the year built for Taxpayer’s home was 1975. The Assessor testified the home was built in 1975. Taxpayer argued in a previous case before the State Board, and the State Board made a finding that Taxpayer’s home was built in 1975. [County Board Record, pp. 40, 83. *See In Re Appeal of Fred Reynolds*, ¶ 6, p. 4, Docket No. 2008-99, April 29, 2009, 2009 WL 1266737 (Wyo.St.Bd.Eq.).

MLS listing had a 1996 “purged mobile home” on 4.91 acres in Tax District 606 and LEA H7. Taxpayer asserted this property should be a comparable to value his property, as it was in the same tax district. [County Board Record, pp. 25, 28, 87-91].

11. Taxpayer’s Exhibit 3 was a two-page MLS listing and three pages of Assessor’s tax records pertaining to a 1978 three bedroom and two bath mobile home for sale. This MLS listing had a mobile home on 8.47 acres in Tax District 606 and LEA listed as S6. Taxpayer asserted this MLS listing should be used to value the land for his property. [County Board Record, pp. 26-27, 92-96].

12. Taxpayer’s Exhibit 4 consisted of the Assessor’s one- page 2011 assessment notice, along with two pages of additional Assessor’s tax records, one page of photos of a building, a one page map, and a one page manufacture’s affidavit of a “purged mobile home” on 3.75 acres in Tax District 606. The LEA was H1, as noted in Exhibit 7. Exhibit 7 was the same property as in Exhibit 4. Taxpayer asserted this property was similar to his property and wanted the value of his property reduced to be comparable to the property in Exhibit 4. [County Board Record, pp. 27-28, 97-102, 110-111].

13. Pat Meyer, Park County Assessor, has twenty-six years experience in the Assessor’s office and is a state certified appraiser. He has over 1,500 hours of education in the assessment and appraisal field. [County Board Record, pp. 37-38].

14. The Assessor used the state’s Computer Assisted Mass Appraisal (CAMA) system to determine a cost value of buildings on a parcel of property, as a step in arriving at a fair market value. Built into the CAMA system were the Marshall and Swift cost tables, from which a cost value or replacement cost new (RCN) was determined for structures on taxed properties. [County Board Record, pp. 42-43].

15. There were several factors considered by the Assessor to determine the RCN of a building, including measurements of the structure or size, materials used in construction, structure characteristics, and quality of construction. To determine Replacement Cost New Less Depreciation (RCNLD), the age and condition of the structure were taken into account. [County Board Record, pp. 40-43, 49-50].

16. Mr. Meyer stated “a purged mobile home is just something that changed identity or relinquished their title and is at least a double wide, and then they are now turned into, valued with the land, as real property, as a stick built house.” Mr. Meyer referred to the Assessor’s tax records pertaining to Taxpayer’s property, as noted in Exhibit 1. Taxpayer’s home was once a mobile home, but now with a relinquished title and permanently attached to the

ground with several additions, it had lost its original identity. Mr. Meyer stated Taxpayer's home was a "purged mobile home." [County Board Record, pp. 38-39, 82-86].

17. The Assessor explained that Taxpayer's home was built in 1975 and had an actual age of 35 years. However, the home had an effective age of 20 years for assessment purposes, because of the good condition it had been kept in. Taxpayer was receiving a 23% depreciation determined by the CAMA system, after data entry of characteristic information for quality and condition of the structure. The Assessor determined Taxpayer's residence was "fair plus" quality and "good" condition. [County Board Record, pp. 39-43, 82-84].

18. Both single wide and double wide mobile homes may be classified as a "purged mobile home" if the title was relinquished and the structure was attached to the ground. However, for assessment purposes, the Assessor valued single wide mobile homes differently than double wide mobile homes. A single wide mobile home was valued only at replacement cost new less depreciation plus the land value. A double wide mobile home was valued as if it were a single story, stick built home plus the land value. The market value was determined by the use of CAMA, and the Marshall and Swift tables utilized within the CAMA system. [County Board Record, pp. 41-42, 97-102].

19. The Assessor explained Exhibit B, which was the same property listed in Taxpayer's Exhibit 4. The Assessor stated the property listed in the exhibit was in the same tax district as Taxpayer's property. However, the property listed in Exhibit B was in a different neighborhood and was considered lower quality land which "may include alkali, sagebrush, deep slope, uneven terrain." The Assessor, therefore, valued Exhibit B land lower than Taxpayer's land. Exhibit B property included a single wide purged mobile home. The structure was not considered a stick built house, in order to avoid over-valuing the property. The Assessor stated single wide purged mobile homes throughout the county were uniformly valued only as single wide mobile homes, which was RCNLD plus the land value. [County Board Record, pp. 41-43, 97-102, 127-132].

20. The land in Exhibit B was valued at \$27,000 for the first acre and \$3,000 for each additional acre, due to its low quality. [County Board Record, pp. 41-42, 97-102, 127-132].

21. The Assessor appraised Taxpayer's land (Exhibit 1) at \$44,000 for the first acre and \$10,000 for each additional acre. The Assessor stated "Mr. Reynold's land is considered good Southfork land, some irrigated, no alkali, no sagebrush, good soil good for landscaping." Therefore, the Assessor valued Taxpayer's land higher for assessment purposes than the land in Exhibit B. The Assessor noted Taxpayer's property was in a different LEA in the prior year's assessment. When Taxpayer's property was changed to the present LEA, the land value increased. [County Board Record, pp. 41-43, 97-102, 127-132].

22. The Assessor determined the fair market value of “purged mobile homes,” like Taxpayer’s, for assessment purposes using RCNLD, due to insufficient open market sales. Taxpayer’s property was not compared to other market sales for “stick built homes” because of the potential for over valuation. [County Board Record, pp. 41-43].

23. The Assessor explained the difference between the property and structures in Exhibit B and Taxpayer’s property. The structure in Exhibit B was a single wide mobile home, which was valued only as a mobile home in the CAMA system. It was attached to the property, therefore was a “purged mobile home” for appraisal purposes. [County Board Record, pp. 44-45, 127-132].

24. The Assessor stated the depreciation for the residence in Exhibit C, will always be greater than Taxpayer’s residence, due to the “average” quality, and “good” condition assigned to this “purged mobile home.” The Assessor stated the depreciation for the residence in Exhibit 4 is “faster, quicker” because it has only a 25 year life span, whereas Taxpayer’s residence has a 50 to 55 year life span, and a lower depreciation rate. [County Board Record, pp. 69-70, 97-102, 127-137].

25. The Assessor presented Exhibits C, D, J, and K. The Assessor described each property listed in each of the exhibits and compared the properties to Taxpayer’s residence and property, pointing out the differences. The exhibits were also used to explain the Assessor’s approach to arriving at a fair market value. The Assessor explained how the CAMA system was applied to value Taxpayer’s property. Mr. Meyer confirmed he complied with the requirements of the Department of Revenue rules and the state statutes in valuing Taxpayer’s property. [County Board Record, pp. 45-48, 50-51, 59-63, 133-143, 155-165].

26. The Assessor presented Exhibit H and explained the method of using sales of various similar or comparable properties which sold in the county in the past year (2010) to confirm RCNLD as the fair market value determined using the CAMA system. All properties were assessed using the CAMA system. Taxpayer’s property did not receive a market adjustment, because there were no open market sales of similar “purged mobile homes” in his LEA. [County Board Record, pp. 55-58, 154].

27. The County Board issued its “Final Decision” concerning Taxpayer’s 2011 property assessment appeal on July 28, 2011. The County Board denied Taxpayer’s appeal and affirmed the Assessor’s 2011 tax assessment valuation. [County Board Record, pp. 168-182].

APPLICABLE LAW AND DISCUSSION OF ISSUES

Applicable Law

28. 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.”

29. 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.”

30. “All property within Wyoming is subject to taxation as provided by this act except as prohibited by the United States or Wyoming constitutions or expressly exempted by W.S. 39-11-105.” *Wyo. Stat. Ann. § 39-11-103(a)(i)*.

31. 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., Inc. v. Dept. of Revenue*, 970 P.2d 841, 852 (Wyo.1998).

32. The Legislature has required all property in Wyoming to be valued annually at fair market value. *Wyo. Stat. Ann. § 39-13-103(b)(ii)*. The statutory valuation date is January 1 of each year; all taxable property must be valued and assessed for taxation in the name of the owner of the property on that date. *Wyo. Stat. Ann. § 39-13-103(b)(i)(A)*.

33. 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., Inc. 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).

34. An assessor’s valuation is presumed valid, accurate, and correct. This presumption survives until overturned by credible evidence. *Britt v. Fremont County Assessor*, 2006 WY 10, ¶ 23, 126 P.3d 117, 125 (Wyo. 2006); *Thunder Basin Coal Co. v. Campbell County, Wyoming Assessor*, 2006 WY 44, ¶ 13, 132 P.3d 801, 806 (Wyo. 2006); *Teton Valley Ranch v. State Board of Equalization*, 735 P.2d 107, 113 (Wyo. 1987). A mere difference of opinion as to value is not sufficient to overcome the presumption. *J. Ray McDermott & Co. v. Hudson*, 370 P.2d 364, 370 (Wyo. 1962); *Thunder Basin Coal Co. v. Campbell County, Wyoming Assessor*, 2006 WY 44, ¶¶ 13, 48, 132 P.3d 801, 806, 816 (Wyo. 2006). The presumption is especially valid where the Assessor valued the property according to the Department’s Rules and Regulations which provide for the use of the CAMA system in the assessment of real property. *Rules, Wyoming Department of Revenue, Chapter 9 § 6(b), (d)*. “The burden is on the taxpayer to establish any overvaluation.” *Hillard v. Big Horn Coal Co.*, 549 P.2d 293, 294 (Wyo. 1976).

35. The Wyoming Supreme Court has described the burden of proof for a taxpayer challenging a county assessor’s valuation:

A strong presumption favors the Assessor’s valuation. “In the absence of evidence to the contrary, we presume that the officials charged with establishing value exercised honest judgment in accordance with the applicable rules, regulations, and other directives that have passed public scrutiny, either through legislative enactment or agency rule-making, or both.” *Amoco Production Co. v. Dept. of Revenue*, 2004 WY 89, ¶ 7, 94 P.3d 430, 435 (Wyo.2004). The Britts [i.e., the protesting taxpayers] had the initial burden of presenting evidence sufficient to overcome the presumption. *Id.*, ¶ 8. If the Britts successfully overcame the presumption, then the county board was “required to equally weigh the evidence of all parties and measure it against the appropriate burden of proof.” *CIG v. Wyoming Dept. of Revenue*, 2001 WY 34, ¶ 10, 20 P.3d 528, 531 (Wyo.2001). The burden of going forward would then have shifted to the Assessor to defend her valuation. *Id.* Above all, the Britts bore “the ultimate burden of persuasion to prove by a preponderance of the evidence that the valuation was not derived in accordance with the required constitutional and statutory requirements for valuing . . . property.” *Id.*

Britt, supra, 2006 WY 10, ¶ 23, 126 P.3d at 125.

36. The Wyoming Supreme Court has recognized the validity of valuations derived from the CAMA system. *Gray v. Wyoming State Board of Equalization*, 896 P.2d 1347, 1351 (Wyo. 1995); *Britt v. Fremont County Assessor*, 2006 WY 10, ¶ 17, 126 P.3d 117, 123 (Wyo. 2006). In fact, the Wyoming Supreme Court rejected the use of actual sales price for properties in favor of the value established by the CAMA system because of the equality and uniformity which result from its use. *Gray, supra*, 896 P.2d at 1351.

37. Our evaluation of this appeal turns, at least in part, on the question of whether there is substantial evidence in the record which reasonably supports the County Board's decision. In determining whether the required substantial evidence is present, the State Board will not substitute its judgement for findings reasonably supported by evidence in the County Board record. *Laramie County Board of Equalization v. State Board of Equalization*, 915 P.2d 1184, 1188-1189 (Wyo. 1996); *Holly Sugar Corp. v. Wyoming State Board of Equalization*, 839 P.2d 959, 963 (Wyo. 1992); *Sage Club, Inc. v. Employment Sec. Comm'n*, 601 P.2d 1306, 1310 (Wyo. 1979). While substantial evidence may be less than the weight of the evidence, it cannot be clearly contrary to the overwhelming weight of the evidence. The Wyoming Supreme Court has stated "[s]ubstantial evidence is a term of art best described as relevant evidence that a reasonable mind can accept as adequate support for an agency's conclusion." *Sidwell v. State Workers' Compensation Div.*, 977 P.2d 60, 63 (Wyo. 1999). See *Schouboe v. Wyoming Dep't of Transportation*, 2010 WY 119, ¶ 12, 238 P.3d 1246, 1248-1249, (Wyo. 2010).

38. Fair market value is defined as:

[T]he amount in cash, or terms reasonable equivalent to cash, a well informed buyer is justified in paying for a property and a well informed seller is justified in accepting, assuming neither party to the transaction is acting under undue compulsion, and assuming the property has been offered in the open market for a reasonable time... .

Wyo. Stat. Ann. § 39-11-101(a)(vi).

39. Each county assessor annually determines the fair market value of residential real property within their county. *Wyo. Stat. Ann. § 18-3-204(a)(i), (ii) and (vi); Wyo. Stat. Ann. § 39-13-103(b)(i)(A) and (ii).* 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); see Wyo. Stat. Ann. § 39-13-103(b)(ii).*

40. The Department has a corresponding statutory obligation to confer with, advise and give necessary instructions and directions to the county assessors as to their duties, and to promulgate rules and regulations necessary for the enforcement of all tax measures. *Wyo. Stat. Ann. § 39-11-102(c)(xvi) and (xix)*. The Department is required to “[p]rescribe the system of establishing the fair market value of all property valued for property taxation to ensure that all property within a class is uniformly valued.” *Wyo. Stat. Ann. § 39-11-102(c)(xv)*. In particular, the Department must “prescribe by rule and regulation the appraisal methods and systems for determining fair market value using generally accepted appraisal standards.” *Wyo. Stat. Ann. § 39-13-103(b)(ii)*.

41. The Department has promulgated rules which establish appraisal techniques which may be used by an assessor. *Rules, Wyoming Department of Revenue, Chapter 9 §§ 5 and 6*. These techniques include the Sales Comparison Approach, the Cost Approach, and the Income or Capitalized Earnings Approach. *Rules, Wyoming Department of Revenue, Chapter 9 § 5 (a)(i), (ii) and (iii)*. The Department Rules also include a number of definitions pertinent to this matter, including “Computer Assisted Mass Appraisal (CAMA)” and “Land Economic Area (LEA).” *Rules, Wyoming Department of Revenue, Chapter 9 § 4 (x) and (xviii), § 7 (a)*. Administrative rules have the force and effect of law. *Wyo. Dep’t of Revenue v Union Pacific Railroad Co.*, 2003 WY 54, ¶ 18, 67 P.3d 1176, 1184 (Wyo. 2003); *Painter v. Abels*, 998 P.2d 931, 939 (Wyo. 2000).

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

43. Department rules provide definitions applicable to the local property valuation and assessment.

Section 4. Definitions.

(a.) For the purpose of property taxation under these rules, the definitions set forth in Title 39, as amended: definitions as set forth by the International Association of Assessing Officers (IAAO) Standard on Mass Appraisal (2008), Standard on Automated Valuation Models (AVMs) (2003), Standard on Ratio Studies (part A) (2007), Standard on Property Tax Policy (2004), Standard on Valuation of Personal Property (2005) and Uniform Standards of [Professional] (sic) Appraisal Practice (USPAP) Standard 6 (2008-2009) are incorporated herein by reference. In addition, the following definitions shall apply:

* * *

(xvii.) “IAAO”: Refers to The International Association of Assessing Officers.

Rules, Wyoming Department of Revenue, Chapter 9 § 4(a.)(xvii.).

44. The Department also prescribes how the various valuation methods are to be evaluated and utilized by an assessor:

Section 5. Appraisal Methods.

(a.) The appraisal techniques which may be used by the County Assessor include the approaches described in this section. Each approach used shall be an appropriate method or the type of property being valued; that is, the property shall fit the assumptions inherent in the appraisal method in order to calculate or estimate the fair market value of the property. **Each approach used shall also consider the nature of the property and the regulatory and economic environment within which the property operates.** All methods used by the Assessor shall be consistent with the applicable IAAO and USPAP standards including, but not limited to, the following (except where standards conflict with Wyoming Statute or Rule): IAAO Standard on Mass Appraisal (2008), IAAO Standard on Automated Valuation Models (AVMs) (2003), IAAO Standard on Ratio Studies (part A) (2007), Uniform Standards of Professional Appraisal Practice (USPAP) Standard 6 (2008-2009), IAAO Standard on Property Tax Policy and IAAO Standard on Valuation of Personal Property (2004).

Rules, Wyoming Department of Revenue, Chapter 9 § 5(a.) (emphasis added).

45. Land Economic Area (LEA) is defined as:

A geographic area that may encompass a group of neighborhoods, defined on the basis that the lands within its boundaries are more or less equally subject to a set of one or more economic forces that largely determine the value of the lands within this area.

Rules, Wyoming Department of Revenue, Chapter 9 § 4(a.)(xviii.).

46. Neighborhood is defined as:

- 1) The environment of a subject property that has a direct and immediate effect on value.
- 2) A geographic area (in which there

are typically fewer than several thousand properties) defined for some useful purpose, such as to ensure for later multiple regression modeling that the properties are homogeneous and share important locational characteristics.

Rules, Wyoming Department of Revenue, Chapter 9 § 4(a.)(xxv.)

47. By rule, the Department has defined its own additional and independent responsibility to monitor the assessors' use of CAMA systems:

(i) Annually, the Property Tax Division shall monitor each Wyoming County Assessor's Office to discuss and insure utilization of Department approved CAMA systems and compliance with all Department directives and orders with regard to appraisal methods and valuation methodologies. The results shall be compiled by identifying current issues of concern and presented to the Department of Revenue Director no later than January 31st of the following year.

Rules, Wyoming Department of Revenue, Chapter 9 § 8(a.)(i.).

48. The Department also prescribes how reconciliation of the various appraisal methods are utilized by an assessor:

Section 9. Reconciliation.

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

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

49. “Under Wyoming’s tax laws, there are three types of property: intangible personal property, real property, and tangible personal property.” *Amoco Production Co. v. Wyoming State Bd. of Equalization*, 15 P.3d 728, 732 (Wyo. 2001).

50. “‘Real property’ means land and **appurtenances, including structures, affixed thereto**, and any intangible characteristic which contributes to the fair market value thereof.” *Wyo. Stat. Ann. § 39-11-101(a)(xv)* (emphasis added). “‘Tangible personal property’ means personal property that, by its nature, is perceptible to the senses; property that has a physical presence beyond merely representational and that is capable of being touched; property that is able to be perceived as materially existent; property that is not intangible.” *Wyo. Stat. Ann. § 39-11-101(a)(xvi)*.

51. The Department has authorized valuation methods are to be evaluated and utilized by an assessor:

(f.) References. Property tax appraisers may use any published source to establish costs or sales of personal property, including, but not limited to, “blue books” on boats, airplanes, farm and construction equipment and information developed by the Ad Valorem Tax Division.

(i.) The Ad Valorem tax Division shall annually conduct a study of information on personal property, using such source material as may be available, including but not limited to trade journals and publications, auction information, sales from dealers and manufacturers, industry associations, as well as comment from interested parties.

(A.) The Ad Valorem Tax Division shall interpret the data collected in the study on personal property and make recommendations. The completed work product shall be published annually and be entitled “Wyoming Personal Property Valuation Manual.

(B.) The “Wyoming Personal Property Valuation Manual” shall also include updated cost trend factor tables and depreciation tables. Said tables shall also be made available on the computer-assisted mass appraisal system for personal property.

(C.) The “Wyoming Personal Property Valuation Manual” shall also include a mobile home quality of construction guide; replacement cost new guides for single, double-wide and triple wide mobile/manufactured homes and additions; percent good schedules for mobile/manufactured homes; a mobile/manufactured home economic obsolescence guide; and quality comparison between costing systems.

Rules, Wyoming Department of Revenue, Chapter 9 § 6(f)(i)(A.), (B.) and (C.).

52. The Department has stated in the *Personal Property Manual*: “Manufactured/Mobile Homes, if on a permanent foundation, in which the title is surrendered will be considered a Modular Home for valuation purposes and should be valued using the site-built cost sections.” *Wyoming Department of Revenue, Appraisal Service Group Property Tax Division, Personal Property Valuation Manual, Sec. 2, p. 2 (2011).*

53. The Department further stated:

Pursuant to a Department of Revenue Directive, issued October 25, 2006 by acting Administrator, Wade W. Hall: . . . Mobile homes that have had the title surrendered and cancelled (often referred to informally as “purged”) become part of the real property and should be listed under the “R” account. The assessor should use the appropriate real property Abstract Code for the “purged” mobile home.

Wyoming Department of Revenue, Appraisal Service Group Property Tax Division, Personal Property Valuation Manual, Sec. 2, p. 1 (2011).

54. The Wyoming Supreme Court has adopted the ordinary meaning of the term “appurtenances.”

The term ‘appurtenances’ is not defined within the statutes. In its ordinary sense, the term means:

That which belongs to something else; an adjunct; an appendage. Something annexed to another thing more worthy as principal, and which passes as incident to it, as a right of way or other easement to land; an outhouse, barn, garden, or orchard, to a house or messuage. (Citation omitted.) An article adapted to the use of the property to which it is connected, and which was intended to be a permanent accession to the freehold. A thing is deemed to be incidental or appurtenant to land when it is by right used with the land for its benefit, as in the case of a way, or watercourse, or of a passage for light, air, or heat from or across the land of another.

Black's Law Dictionary, Sixth Ed. 103 (1990) (emphasis added). For the flow lines to be considered appurtenant to the land, then, they must be connected to the land in a manner intended to be permanent, and they must benefit the land.

* * *

Therefore, to determine if the [objects] are appurtenant to the real estate, we look to determine whether: (1) the object is connected or attached to the realty; (2) the appropriation or adaptation of the object is related to the use or purpose of that part of the realty to which it is connected or attached; and, (3) the party making the attachment or connection objectively intended a permanent accession to the freehold with that intention being inferred from the nature of the object affixed, the purpose it serves on the land, and the party's relationship to the object and the land.

Amoco Production Co. v. Wyoming State Bd. of Equalization, supra, 15 P.3d at 732-733.

55. In *Milnes v. Milnes* the Wyoming Supreme Court addressed the question of whether a manufactured home was real or personal property.

[¶ 8] The district court concluded that the manufactured home was real property that went with the land on which it was located. That conclusion was based upon these findings:

a. [N]o Certificate of Title for the Home was introduced by [Coray], but [he] did introduce a certificate of origin for a manufactured home;

b. the Home has been taxed as a mobile home by the Platte County Treasurer separate from the tax assessments of the real property, Exhibits N-1 to N-5, Exhibit K.

c. there are no axles, wheels, or a hitch attached to the Home;

d. the Home is set on concrete blocks sitting upon poured concrete slabs in the crawl space placed on the real property for such purpose, Exhibit 6-1; 6-2; 6-3; 6-4 and 6-6;

e. there are cables attached to the home [which] are bolted into 6" thick concrete slabs in the crawl space. Exhibits 6-5, 6-6, 6-8, 6-9. Witness Jim Parks testified that such manner of attaching tie-down cables was more permanent than normal mobile home installation required by insurance carriers in the State of Wyoming;

f. the Home has a landscaped yard with trees and fencing around [the] house, Exhibits 6-12, 6-13, 6-14, 6-17, 6-18, 6-19, 6-20, and 6-21;

g. there is a permanent, stick-built garage (the "Garage") located with ten (10) ft. from Home, which, it is not disputed, is part of the real property. The Garage was constructed by the decedent within a few months after installation of the Home and used by her during her occupancy of the home. Exhibits 6-10, 6-11, 6-12, 6-16, and 6-18.

h. the Home and the permanent Garage appear to be a single living unit;

- i. the Home has wood skirting with interior framing and exterior siding to the ground. Exhibits 6-6, 6-7, 6-14, 6-15, 6-16, 6-17, 6-18, and 6-19;
- j. there are permanent underground utility services installed to the Home;
- k. the Home has a permanent exterior rear deck that was constructed and attached to the Home after its delivery and installation, Exhibit 6-13;
- l. the Home has a permanent rear covered porch that was constructed and attached to the Home after its delivery and installation, Exhibit 6-10;
- m. the Home has an air conditioning unit permanently installed near the rear covered porch that was constructed next to the Home after its delivery and installation, Exhibit 6-10;
- n. the Home has permanent gutters and drain spouts installed after the delivery and installation of the Home on the property, Exhibits 6-10, 6-14 and 6-15;
- o. the Home is located upon an eighty (80) acre parcel of real estate with no other residential structures located upon such parcel; that tract was zoned for placement of cement pads to set a mobile home on;
- p. the decedent, Shirley Milnes, resided in the Home from the date of its installation to the date of her final hospitalization, a period of approximately five (5) years;
- q. no evidence was introduced indicating that the decedent treated the Home as anything other than her permanent residence;
- r. that the insurance coverage for the Home purchased by the decedent included coverage for the permanent Garage. Exhibit J, Page 3.
- s. in totality, although the Home could have been made moveable, it was permanently attached to the real estate. The evidence as a whole indicates that Shirley intended that the house be a permanent part of the real estate.

[¶ 9] The district court went on to conclude that its factual determination was supported by pertinent law. For example, although Mother had not done so, Wyoming statutes provide that a transportable or mobile home can be converted to real property. Wyo. Stat. Ann. § 31-2-502(b) (LexisNexis 2007). Ordinarily “mobile homes” like the one at issue are taxed as personal property, and that was true of Shirley's. While this Court has not dealt with the specific issue raised in this dispute, we have recognized a general rule that a chattel, or moveable, may become a fixture that becomes a part of the real estate on which it is affixed. In *Wyoming State Farm Loan Board v. FCSCC*, 759 P.2d 1230, 1234 (Wyo.1988) we opined:

This court has not had occasion to discuss this aspect of the law of fixtures for nearly forty-eight years. *See School District No. II, Laramie County v. Donahue*, 55 Wyo. 220, 97 P.2d 663, 664 (1940). When presented with this issue, however, we still rely on the three-part test first set forth in the landmark case of *Teaf v. Hewitt*, 1 Ohio St. 511, 525 (1853):

“It has been said upon abundant authority that, generally speaking, the proper criterion of an irremovable fixture consists in the united application of three tests, viz:

“ ‘1st. Real or constructive annexation of the article in question to the realty.

“ ‘2d. Appropriation or adaptation to the use or purpose of that part of the realty with which it is connected.

“ ‘3d. The intention of the party making the annexation to make the article a permanent accession to the freehold, this intention being inferred from the nature of the article affixed, the relation and situation of the party making the annexation and policy of the law in relation thereto, the structure and mode of the annexation and the purpose or use of which the annexation has been made.’ [Citations.] * * *.” *Holland Furnace Co. v. Bird*, 45 Wyo. 471, 21 P.2d 825, 827-828 (1933).

Also see Wyo. Stat. Ann. § 39-11-101(a)(xv) (LexisNexis 2007) (defining “real property” as “land and appurtenances, including structures, affixed thereto, and any intangible characteristic which contributes to the fair market value thereof”); *Amoco Production Co. v. Wyoming State Board of Equalization*, 2001 WY 1, ¶ 9, 15 P.3d 728, 732-33 (Wyo.2001); *In re Claxton*, 239 B.R. 598, 34 Bankr.Ct.Dec. 1323 (U.S. Bankr., Ct. N.D. OK 1999) (mobile home treated as real estate subject to mortgage); 2 Powell on Real Property § 18B.04 (Michael Allan Wolf ed., LexisNexis Matthew Bender & Co.2000) (“... if the mobile home has substantially lost its identity as a mobile home by virtue of its being permanently affixed to the land, it would be taxed as realty....”).

[¶ 10] We hold that the district court's factual findings with respect to the manufactured home are not clearly erroneous and its conclusions of law are correct. More specifically, we do not view the fact that the manufactured home had, historically, been taxed as personal property as determinative of the issue. The district court properly included all relevant facts and circumstances in reaching its decision.

Milnes v. Milnes, 2008 WY 11, ¶¶ 7–10, 175 P.3d 1164, 1167–1168 (Wyo. 2008).

56. Wyoming Statutes governing the titling of mobile homes provide in pertinent part as follows:

§ 31-2-501. Definitions; application required.

(a) As used in this act:

(i) The definitions in W.S. 31-1-101 apply;

(ii) **“Mobile home” means a transportable home defined in W.S. 31-1-101(a)(xxiv)(C);**

(iii) “Mobile home dealer” means as defined in W.S. 35-18-102(a)(v) but includes a finance agency as defined in W.S. 34.1-2-104;

(iv) “This act” means W.S. 31-2-501 through 31-2-508.

(b) Except as provided by W.S. 31-2-502, every owner of a mobile home located in this state for which no Wyoming certificate of title has been issued to the owner, or the transferee upon transfer of ownership of a mobile home, shall apply for a certificate of title at the office of a county clerk within thirty (30) days of the date the mobile home became subject to this act, or upon a transfer, within thirty (30) days of the date of transfer.

§ 31-2-502. Exclusions.

(a) No certificate of title shall be issued or required for mobile homes:

(i) Owned by the United States;

(ii) Being transported from a point outside this state;

(iii) Held for sale by a Wyoming mobile home dealer;

(iv) **Installed on a permanent foundation, taxable as real property and which has no current title under this act.**

(b) **If a mobile home is installed on a permanent foundation and is taxable as real property, the certificate of title or manufacturer's certificate of origin, if any, shall be surrendered to and cancelled by the county clerk of the county in which the mobile home is located** except that no title shall be cancelled under this subsection unless all liens on the home have been released. The county clerk may require the person surrendering the

title for cancellation to disclose information necessary to determine whether cancellation is proper under law. (emphasis added)

57. The Wyoming Supreme Court has held “the related doctrines of res judicata and collateral estoppel apply to final determinations by administrative agencies.” *University of Wyoming v. Gressley*, 978 P.2d 1146, 1153 (Wyo. 1999) (quoted in *Bender v. Unita County Assessor*, 14 P.3d 906, 910 (Wyo. 2000); accord *Taylor v. State, ex rel., Wyoming Workers’ Safety and Compensation Div.*, 2010 WY 76, ¶ 15, 233 P.3d 583, 586 (Wyo. 2010). The Wyoming Supreme Court stated the doctrine of collateral estoppel is more appropriate when dealing with the decisions of administrative agencies “because such agencies deal primarily with issues rather than with claims that can be pleaded in court.” *University of Wyoming*, *supra* 978 P.2d at 1153 (quoted in *Bender*, *supra* 14 P.3d at 910).

58. The factors the Wyoming Supreme Court uses to determine whether collateral estoppel applies to an issue are:

(1) whether the issue decided in the prior adjudication was identical with the issue presented in the present action; (2) whether the prior adjudication resulted in a judgment on the merits; (3) whether the party against whom collateral estoppel is asserted was a party or in privity with a party to the prior adjudication; and (4) whether the party against whom collateral estoppel is asserted had a full and fair opportunity to litigate the issue in the prior proceeding.

Slavens v. Board of County Commissioners for Uinta County, 854 P.2d 683, 686 (Wyo. 1993).

59. In *Kahrs v. Board of Trustees for Platte County School Dist. No. 1*, 901 P.2d 404 (Wyo. 1995), the Wyoming Supreme Court clarified its holding in *Slavens*:

“We have opined that, since administrative agency decisions deal primarily with issues rather than with causes of action or claims, collateral estoppel is the appropriate preclusion doctrine to be applied to final administrative agency decisions. *Slavens*, 854 P.2d at 686. The collateral estoppel doctrine prevents relitigation of issues which were involved actually and necessarily in a proper action between the same parties. *Willowbrook Ranch, Inc. v. Nugget Exploration, Inc.*, 896 P.2d 769, 772 (Wyo.1995).”

Id. at 406. The *Kahrs* Court stated “[w]e are particularly mindful of the fact that Kahrs did

not appeal to the state district court for a judicial review of the board's decision . . ." *Id.* at 407.

Discussion

60. Taxpayer filed a timely appeal of the Assessor's 2011 assessment of his property. Taxpayer had a protest hearing before the County Board and a decision was made by the County Board affirming the Assessor's valuation. Taxpayer timely appealed the County Board's decision to the State Board and the State Board has jurisdiction to hear and decide this matter. *Supra* ¶¶ 3, 27.

61. Taxpayer's initial contention was based upon the conclusion by the County Board that his home was a "purged mobile home." *Supra* ¶¶ 6, 29. The determination of a "purged mobile home" was made during the assessment process by the Assessor for the purposes of establishing a market value for a tax assessment. The term "purged mobile home" was derived from Department directives and rules and was part of the appraisal and CAMA system nomenclature. *Supra* ¶¶ 16, 40-42, 50-53. Taxpayer, in his opening brief, objected to his home being classified as a "purged mobile home," which was the same as he made before the County Board. *Supra* ¶¶ 8, 27.

62. Taxpayer, however, did not raise an issue before the State Board of whether the County Board was correct in its Final Decision by determining his argument regarding the "purged mobile home" was barred from relitigation due to the legal doctrine of collateral estoppel. *Taxpayer's Opening Brief; County Board Final Decision*, ¶¶ 9, 10 [County Board Record pp. 180-181].

63. Mr. Reynolds raised the issue of whether his home was still a mobile home or considered real property before the State Board in a previous case. *See In Re Appeal of Fred Reynolds*, Docket No. 2008-99, April 29, 2009, 2009 WL 1266737 (Wyo.St.Bd.Eq.). The State Board, in affirming the County Board's decision, determined Taxpayer's mobile home was permanently part of the real property, as it was attached to the ground and did not have axles. *Id.* at ¶ 20. Additionally, the mobile home did not have a certificate of title. *Id.* The State Board stated in its 2009 decision:

The County Board record indicates Taxpayer's mobile home was placed upon a permanent foundation, and was modified with stick build additions. *Supra*, ¶ 6. There is no title to the mobile home that is known to the Taxpayer or Assessor. *Supra*, ¶ 9. Taxpayer's opinion as to the nature or status of his mobile home can not be the driving force behind the Assessor's conclusions

of fair market value. Taxpayer's opinion, contrary to state statute, does not create a reduced valuation, nor does it require the Assessor to treat his property differently from similar properties. In reducing the value of Taxpayer's residential improvements, the Assessor recognized there was a difference in the fair market value of Taxpayer's property as when compared with similar properties. *Supra*, ¶ 8. Taxpayer presented no evidence to challenge the amount of reduction as being insufficient, other than to assert his residential home should be valued as personal property, in the form of a mobile home, rather than the appropriate statutorily defined real property.

In Re Appeal of Fred Reynolds, Docket No. 2008-99, ¶ 27, April 29, 2009, 2009 WL 1266737 (Wyo.St.Bd.Eq.).

64. The doctrine of collateral estoppel is an appropriate legal doctrine to be considered in this administrative matter. The Wyoming Supreme Court has stated collateral estoppel applies if these four factors are met:

(1) whether the issue decided in the prior adjudication was identical with the issue presented in the present action; (2) whether the prior adjudication resulted in a judgment on the merits; (3) whether the party against whom collateral estoppel is asserted was a party or in privity with a party to the prior adjudication; and (4) whether the party against whom collateral estoppel is asserted had a full and fair opportunity to litigate the issue in the prior proceeding.

Supra ¶¶ 57-59. When the same issue was decided in a previous matter, in which the party was the same, as in this case, Mr. Reynolds was collaterally estopped from relitigating whether his home was a "purged mobile home" for the 2011 assessment valuation. Taxpayer's property is the identical property which was the subject of Taxpayer's fully adjudicated appeal before the State Board in its 2009 decision. The State Board determined the Assessor was correct in treating Taxpayer's residential property as real property and not as personal property. *Supra* ¶¶ 5, 63. Taxpayer had the opportunity to appeal the 2009 decision of the State Board to the district court, but he did not. The County Board was correct in affirming Assessor's determination that Taxpayer's residence was a "purged mobile home." *Supra* ¶¶ 5, 16, 49-56.

65. Taxpayer provided no credible evidence during the hearing before the County Board that his residence was only a mobile home or was only personal property, or that it was not a permanent appurtenance to the real estate. Taxpayer provided no cogent argument nor citation to pertinent legal authority to support his position. The State Board finds no merit

in Taxpayer's arguments. *Supra* ¶¶ 6-9, 49-52, 54-56.

66. Taxpayer's second contention was whether the Assessor's use of "replacement cost new" was an appropriate method of determining fair market value for property. *Supra* ¶¶ 4, 9. The Assessor explained the CAMA system and how property values were determined using the Marshall and Swift tables incorporated into the CAMA system. *Supra* ¶¶ 14-15. The Assessor explained the differences in costs for a "purged mobile home" as well as mobile homes and stick built homes. *Supra* ¶¶ 16-18. The Assessor explained how he followed Wyoming's statutes and the Department's rules in arriving at a value for Taxpayer's property, as well as the properties listed in each exhibit offered by Taxpayer as comparable. The Assessor explained the difference between neighborhoods or LEA's in the admitted exhibits and explained why the land values were different. Additionally, the Assessor was able to systemically explain the specific appraisal differences in each of the properties in Taxpayer's exhibits to the appraisal of Taxpayer's property. *Supra* ¶¶ 9-12, 16-26, 28-32, 38-48.

67. Mr. Reynolds did not provide any credible evidence that the Assessor did not follow the state's statutes or Department's rules, he simply argued the Assessor was acting in an arbitrary and capricious manner. Mere difference of opinion is not sufficient evidence to overcome a presumption of correct assessment practices by the Assessor. *Supra* ¶¶ 4-9, 34-36.

68. Taxpayer questioned the Assessor's use of the Marshall and Swift values utilized in the CAMA system, but the tables were not admitted into evidence. *Supra* ¶¶ 4-9. The Assessor explained the Marshall and Swift tables were incorporated into the computer software of CAMA system. Marshall and Swift tables were used to determine the replacement cost new "RCN" property values. *Supra* ¶¶ 14-18. The Assessor further explained that RCN was then adjusted allowing for the age, condition, and quality of structures, thus setting the value at replacement cost new less depreciation "RCNLD," which is closer to a fair market value. *Supra* ¶¶ 15-18. Finally, the Assessor explained how property sales occurring in Taxpayer's neighborhood or LEA were then compared to the RCNLD. *Supra* ¶¶ 19-24. The difference is the market adjustment necessary to reach fair market value. *Supra* ¶¶ 25-26. Taxpayer's property was not market adjusted due to a lack of sales, so it was only appraised at RCNLD. The Wyoming Supreme Court considered the use of the cost approach in property appraisal and determined that it was reasonable and a rational method to reach a fair market value. *Supra* ¶¶ 26, 33-34, 36.

69. The Assessor explained in detail how he arrived at Taxpayer's property value for tax assessment purposes. The Assessor testified that Taxpayer's residence structure was "purged mobile home" which was considered a "stick built" home due to the multiple additions made

to the original structure. The Assessor explained how the RCNLD was arrived at, and due to the lack of open market “purged mobile home” sales necessary for a market comparison and validation, no market adjustment was made to Taxpayer’s home, thus keeping the value lower than other stick built homes. *Supra* ¶¶ 14- 22, 26.

70. Taxpayer did not agree with the Assessor’s appraisal methods nor the use of the CAMA system. However, Taxpayer offered no other methods, systems, or evidence which would show the Assessor was incorrect. Taxpayer did not understand that a market adjustment was not made to his property due to the lack of valid open market sales of properties similar to his. His residence was valued less than similar “stick built homes” in his neighborhood. Taxpayer simply argued the methods used by the Assessor were “arbitrary and capricious” without further evidence. *Supra* ¶¶ 6-9.

71. Taxpayer’s final contention was the mocking suggestion that the lack of sagebrush on his property was an improper consideration for land value. Taxpayer’s argument was not cogent, was unsupported in fact or law, and is without merit. The Assessor testified that Taxpayer’s land was more valuable due to the lack of sagebrush, as compared to land in other neighborhoods or LEA’s. *Supra* ¶¶ 7, 9, 19, 21.

72. Taxpayer did not present any credible evidence challenging the CAMA system, its use by the Assessor, or the information specific to his property entered into the CAMA system. Taxpayer provided no evidence his residence was anything but a “purged mobile home.” *Supra* ¶¶ 5-9, 16-17.

73. The Assessor was well educated, trained, and a seasoned property appraiser. The Assessor followed the statutes and Department Rules, as required in valuing Taxpayer’s property. *Supra* ¶¶ 13, 25, 39-40. The valuation the Assessor derived using the CAMA system, and his decision regarding land value, are presumed valid, accurate, and correct. *Supra* ¶¶ 33-36. In this case, Taxpayer failed to present sufficient evidence to overcome the presumption of validity in favor of the Assessor’s valuation determination for both his structures and land. *Supra* ¶¶ 34-37. The CAMA system was a rational method, equally applied to all property, and achieved essential fairness. *Supra* ¶¶ 33, 36. The decision of the County Board affirming the Assessor’s valuation is supported by substantial evidence. We further conclude, based on our review of the record, the County Board decision was neither unlawful, arbitrary, nor capricious.

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ORDER


IT IS THEREFORE HEREBY ORDERED the Park County Board of Equalization's Final Decision dated July 28, 2011, denying Taxpayer's appeal and affirming the Assessor's 2011 valuation of Taxpayer's property is **affirmed**.

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

DATED this 5th day of December, 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

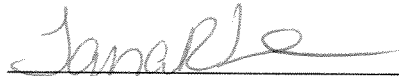
CERTIFICATE OF SERVICE

I hereby certify that on the 5th day of December, 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:

Fred Reynolds
12 Bartlett Lane
Cody, WY 82414

Pat Meyer
Park County Assessor
1002 Sheridan Avenue
Cody, WY 82414

James F. Davis
Park County Attorney's Office
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ABA State and Local Tax Reporter
State Library
File