

BEFORE THE STATE BOARD OF EQUALIZATION
FOR THE STATE OF WYOMING

IN THE MATTER OF THE APPEAL OF)
CLYDE V. SNELL REVOCABLE TRUST) Docket No. **2012-71**
FROM A DECISION OF THE JOHNSON)
COUNTY BOARD OF EQUALIZATION)
2012 PROPERTY VALUATION)

DECISION AND ORDER

APPEARANCES

Tonia Hanson, Omohundro & Hanson Law Offices, LLP, appeared on behalf of the Clyde V. Snell Revocable Trust (Taxpayer).

Kenneth DeCock, Johnson County and Prosecuting Attorney, appeared on behalf of the Johnson County Assessor, Cindy Rogers (Assessor).

DIGEST

The Taxpayer appealed a Johnson County Board of Equalization (County Board) decision dismissing its appeal for lack of standing and subject matter jurisdiction to the Wyoming State Board of Equalization (State Board). Taxpayer and Assessor filed briefs as permitted by the State Board's August 21, 2012, Briefing Order and Rules. Neither party requested oral argument.

The State Board, Chairman Steven D. Olmstead, Vice Chairman Paul Thomas Glause, and Board Member E. Jayne Mockler considered the County Board record, County Board decision, Petitioner's Notice of Appeal, Petitioner's Opening Brief, Assessor's Response Brief and Petitioner's Reply Brief.¹

¹ Deborah J. Smith retired effective December 9, 2012, during the time this matter was pending. E. Jayne Mockler was appointed to the State Board effective March 20, 2013, and participated in the consideration of this matter.

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*. Based on that review, the decision of the Johnson County Board of Equalization is affirmed.

ISSUES

Taxpayer identified four issues:

1. Did the County Board err in dismissing this matter for lack of subject matter jurisdiction?
2. Did the County Board err in dismissing the appeal for lack of standing?
3. Did the County Board err, as a matter of law, in granting the Motion to Dismiss?
4. Was the decision of the County Board both arbitrary and capricious and not supported by substantial evidence?

Taxpayer's Opening Brief, p. 4.

The Assessor identified two issues:

1. Did the County Board have subject matter jurisdiction?
2. Did the Taxpayer have standing?

Assessor's Response Brief, p. 4.

PROCEEDINGS BEFORE THE COUNTY BOARD

Taxpayer filed an appeal with the County Board asserting property owned by it had been omitted from the Assessor's 2012 Assessment Notice. The Assessor filed "Respondent's Motion to Dismiss Appeal for Lack of Standing and Subject Matter Jurisdiction" on May 29, 2012, with the County Board. Taxpayer filed a response to the motion on June 13, 2012, and the County Board heard the parties' arguments regarding the motion on June 19, 2012. No

evidence was received by the County Board on the merits of Taxpayer's protest. The County Board issued a written decision on July 3, 2012, dismissing Taxpayer's appeal for lack of standing and for lack of subject matter jurisdiction. [County Board Record pp. 9-10, 12-15, 18, 21-22, 29-31].

STANDARD OF REVIEW

When the State Board hears appeals from a county board, it acts as an intermediate level of appellate review. *Laramie County Board of Equalization v. Wyoming State Board of Equalization*, 915 P.2d 1184, 1188 (Wyo. 1996); *Union Pacific Railroad Company v. Wyoming State Board of Equalization*, 802 P.2d 856, 859 (Wyo. 1990). In its appellate capacity, the State Board treats a county board as the finder of fact. *Id.* In contrast, the State Board acts as the finder of fact when it hears contested cases on appeal from final decisions of the Department of Revenue (Department). *Wyo. Stat. Ann. § 39-11-102.1(c)*. This sharp distinction in roles is reflected in the State Board Rules governing the two different types of proceedings. *Compare Rules, Wyoming State Board of Equalization, Chapter 2 with Rules, Wyoming State Board of Equalization, Chapter 3.*

The State Board standards for review of a county board decision are, by Rule, nearly identical to the Wyoming Administrative Procedure Act standards which a district court must apply in reviewing an agency action, findings of fact, and conclusions of law. *Wyo. Stat. Ann. § 16-3-114(c)(ii)*. However, unlike a district court, the State Board will not rule on claims a county board has acted “[c]ontrary to constitutional right, power, privilege or immunity.” *Wyo. Stat. Ann. § 16-3-114(c)(ii)(B)*. The State Board's review is limited to a determination of whether a county board's action is:

- (a) Arbitrary, capricious, an abuse of discretion or otherwise not in accordance with law;
- (b) In excess of statutory jurisdiction, authority or limitations or lacking statutory right;
- (c) Without observance of procedure required by law; or
- (d) Unsupported by substantial evidence.

Rules, Wyoming State Board of Equalization, Chapter 3 § 9.

Since the State Board Rules are patterned on the judicial review provision of the Wyoming Administrative Procedure Act, we look to precedent under Wyoming Statutes section 16-3-114(c) for guidance. For example, we must apply this substantial evidence standard:

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

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

We also apply this standard when reviewing conclusions of law:

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

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

We review the findings of ultimate fact of a county board *de novo*:

“When an agency’s determinations contain elements of law and fact, we do not treat them with the deference we reserve for findings of basic fact. When reviewing an ‘ultimate fact,’ we separate the factual and legal aspects of the finding to determine whether the correct rule of law has been properly applied to the facts. We do not defer to the agency’s ultimate

factual finding if there is an error in either stating or applying the law.”

Basin Elec. Power Co-op., Inc. v. Dep't of Revenue, State of Wyo., 970 P.2d 841, 850-51 (Wyo. 1998) (citations omitted).

Britt v. Fremont County Assessor, 2006 WY 10, ¶ 17, 126 P.3d 117, 123 (Wyo. 2006).

We also apply this “arbitrary and capricious” standard:

Even if sufficient evidence is found to support the agency’s decision under the substantial evidence test, this [Board] is also required to apply the arbitrary-and-capricious standard as a “safety net” to catch other agency action which might have violated the Wyoming Administrative Procedures Act. *Decker v. Wyoming Medical Comm’n*, 2005 WY 160, ¶ 24, 124 P.3d 686, 694 (Wyo. 2005). “Under the umbrella of arbitrary and capricious actions would fall potential mistakes such as inconsistent or incomplete findings of fact or any violation of due process.” *Id.* (quoting *Padilla v. State ex rel. Wyoming Workers’ Safety and Comp. Div.*, 2004 WY 10, ¶ 6, 84 P.3d 960, 962 (Wyo. 2004)).

State ex rel. Wyoming Workers’ Safety and Comp. Div. v. Madeley, 2006 WY 63, ¶ 8, 134 P.3d 281, 284 (Wyo. 2006).

FACTS PRESENTED TO THE COUNTY BOARD

1. The Assessor sent Taxpayer an assessment notice for property identified as being owned by it in Johnson County, Wyoming, as of January 1, 2012. Taxpayer’s property being assessed was located at 606 Comanche Lane, Buffalo, Wyoming, and described as “Condominium Building Number 4, Unit B of the Village of Comanche Cove Condominiums, City of Buffalo, Wyoming, in lots 19, 20, 21, and 22, Block 3 of the 4-K Addition.” The Assessment Notice was mailed to Taxpayer on April 26, 2012. [County Board Record, p. 6].

2. Taxpayer filed a timely protest with the Assessor on May 10, 2012. Taxpayer asserted the Assessor had not included all of the property owned by it on the Assessment Notice and requested the assessment be amended to include additional property. Taxpayer asserted,

under oath,² a complex and detailed explanation regarding the property development and conveyances, among other things, and then expressed that certain property identified as “Unit #3, located at 605 Comanche Lane” was not owned by Nancy M. Lick, and that Taxpayer had an interest in this property. Taxpayer stated “Ms. Lick does not own Unit #3, located at 605 Comanche Lane, the 5 original purchasers or their successors in interest each own a 1/5th (20%) interest in the house and their assessment notices should reflect this fact.” Taxpayer also claimed the county had defrauded the owners (of the condominiums) because the assessor’s office issued illegal assessment notices. Taxpayer concluded by writing “[t]he Clyde V. Snell Revocable Trust’s interest is undervalued by approximately \$33,321 and undertaxed by \$220.60.” [County Board Record, pp. 1-6].

3. Johnson County Clerk issued a Notice of Hearing on May 21, 2012, setting Taxpayer’s contested case hearing before the County Board for June 19, 2012, at 3:30 p.m. [County Board Record, pp. 9-11].

4. On May 29, 2012, the Assessor filed a motion “To Dismiss Appeal for Lack of Standing and Subject Matter Jurisdiction” before the County Board, with an attached copy of a recorded warranty deed, requesting Taxpayer’s protest be dismissed. The attached warranty deed dated November 5, 2005, conveyed “Condominium Building Number 3 of the Village at Comanche Cove Condominiums, City of Buffalo, Wyoming, located in Lots 19, 20, 21 and 22, Block 3 of the Four-K Addition” to Nancy M. Lick. Additionally, the Assessor filed a motion requesting a hearing be set on the Motion to Dismiss. [County Board Record, pp. 12-17].

5. On May 30, 2012, the County Clerk issued an Order Setting Hearing for the County Board to hear the Assessor’s Motion to Dismiss for June 19, 2012, at 2:00 p.m. [County Board Record, pp. 18-20].

6. On June 13, 2012, Taxpayer filed its response to the Assessor’s Motion to Dismiss, stating its position on the motion. Taxpayer also filed a “Designation of Trustee Agent,” naming Clyde Allen Snell as the Trustee Agent for Clyde V. Snell. [County Board Record, pp. 21-24].

7. The County Board held a hearing on June 19, 2012. The County Board first heard the matter regarding the assessor’s Motion to Dismiss. [County Board Recording of Hearing]. No evidence was presented or taken on the merits regarding Taxpayer’s protest by the

² The oath requirement on the Statement to Contest Property Tax Assessment form is no longer required under Wyo. Stat. Ann. § 39-13-109(b)(i). The oath requirement was removed effective February 13, 1999. 1999 Wyo. Sess. Laws Ch. 12.

County Board. The County Board considered the warranty deed attached to Assessor's Motion to Dismiss. Assessor's and Taxpayer's legal counsel presented arguments on the Motion to Dismiss. The County Board granted the Motion to Dismiss at the conclusion of the arguments and issued a written order dated July 3, 2012. [County Board Record, pp. 26-27, 29-31, County Board Recording of Hearing].

APPLICABLE LAW and DISCUSSION OF ISSUES

8. The State Board is required to "hear appeals from county boards of equalization." *Wyo. Stat. Ann. § 39-11-102.1(c)*. Taxpayer timely filed an appeal of the County Board's decision with the State Board effective August 2, 2012, and the State Board has jurisdiction to consider this appeal. *Rules, Wyoming State Board of Equalization, Chapter 3 § 2*.

Applicable Law

9. 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), (vi); Wyo. Stat. Ann. § 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)*.

10. All taxable property in Wyoming "shall be annually listed, valued and assessed for taxation in the county in which located and in the name of the owner of the property on January 1." *Wyo. Stat. Ann. § 39-13-103(b)(i)(A)*.

11. Each county assessor shall "examine county records relating to transfers of property and gather from all reliable sources information of the changes of ownership of property, and record transfers of property to enable him to assess all property to its rightful owner or owners." *Wyo. Stat. Ann. § 18-3-204(a)(iii)*.

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

13. A taxpayer has the right to appeal an assessor's annual property valuation by filing a notice of appeal with the assessor within thirty (30) days of the assessor's mailing of the assessment notice.

(b) Appeals. The following shall apply:

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

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

14. Wyoming Statutes set the duties of a county board of equalization in the assessment process:

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

(i) Add to the assessment roll and value any taxable property within the county not included within the assessment roll as returned by the county assessor at its meeting in April;

(ii) Equalize the assessment and valuation of the taxable property which is assessed and valued by the county assessor;

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

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

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

(d) The county board of equalization has no power to and shall not set tax policy nor engage in any administrative duties concerning assessments which are delegated to the board, the department or the county assessor.

Wyo. Stat. Ann. § 39-13-102(c), (d) (emphasis added).

15. It is an elementary rule of statutory interpretation that all portions of an act must be read *in pari materia*, and every word, clause and sentence of it must be considered so that no part will be inoperative or superfluous. Also applicable is the oft-repeated rule that it must be presumed the Legislature did not intend futile things. *Hamlin v. Transcon Lines*, 701 P.2d 1139, 1142 (Wyo.1985). See *TPJ v. State*, 2003 WY 49, ¶ 11, 66 P.3d 710, 713 (Wyo.2003).

16. “We must accept statutes as they are written; neither omitting words that are included, nor including words that are omitted.” *Cheyenne Newspapers, Inc. v. Building Code Board of Appeals of the City of Cheyenne*, 2010 WY 2, ¶ 9, 222 P.3d 158, 162 (Wyo.2010); accord *BP America Production Co. v. Dep't of Revenue*, 2005 WY 60, ¶ 15, 112 P.3d 596, 604 (Wyo.2005); *Hede v. Gilstrap*, 2005 WY 24, ¶ 6, 107 P.3d 158, 163 (Wyo.2005); *Fontaine v. Bd. of County Comm'rs of Park County*, 4 P.3d 890, 895 (Wyo.2000); *In re Adoption of Voss*, 550 P.2d 481, 485 (Wyo.1976).

17. “A basic tenet of statutory construction is that the omission of words from a statute is considered to be an intentional act by the legislature, and this [Board] will not read words into a statute when the legislature has chosen not to include them.” *Merrill v. Jansma*, 2004 WY 26, ¶ 29, 86 P.3d 270, 285 (Wyo.2004). “Words may not be inserted in a statutory provision under the guise of interpretation.” *In re Adoption of Voss*, 550 P.2d 481, 485 (Wyo.1976); accord *Spreeman v. State*, 2012 WY 88, ¶ 13, 278 P.3d 1159, 1163 (Wyo.2012); *Adelizzi v. Stratton*, 2010 WY 148, ¶ 11, 243 P.3d 563, 566 (Wyo.2010).

18. In construing statutes, the following standard applies:

The paramount consideration is to determine the legislature's intent, which must be ascertained initially and primarily from the words used in the statute. We look first to the plain and ordinary meaning of the words to determine if the statute is ambiguous. A statute is clear and unambiguous if its wording is such that reasonable persons are able to agree on its meaning with consistency and predictability. Conversely, a statute is ambiguous if it is found to be vague or uncertain and subject to varying interpretations. If we determine that a statute is clear and unambiguous, we give effect to the plain language of the statute.

RME Petroleum Co. v. Wyo. Dep't of Revenue, 2007 WY 16, ¶ 25, 150 P.3d 673, 683 (Wyo.2007) (citations omitted); *quoted in Morris v. CMS Oil and Gas Co.*, 2010 WY 37, ¶ 26, 227 P.3d 325, 333 (Wyo.2010) and *Kennedy Oil v. Dep't of Revenue*, 2008 WY 154, ¶ 10, 205 P.3d 999, 1003 (Wyo.2008).

19. In interpreting a statute, the State Board will give deference to the statutory interpretation of an agency charged with administration of a statute, unless that interpretation is clearly erroneous. *Parker Land & Cattle Company*, 845 P.2d 1040, 1045 (Wyo.1993).

20. Wyoming Statutes Annotated section 8-1-103 provides in part:

(a) The construction of all statutes of this state shall be by the following rules, unless that construction is plainly contrary to the intent of the legislature:

(i) Words and phrases shall be taken in their ordinary and usual sense, but technical words and phrases having a peculiar and appropriate meaning in law shall be understood according to their technical import.

21. "As we have often stated, our rules of statutory construction focus on discerning the legislature's intent. In doing so, we begin by making an 'inquiry respecting the ordinary and obvious meaning of the words employed according to their arrangement and connection.' *Parker Land and Cattle Company v. Wyoming Game and Fish Commission*, 845 P.2d 1040, 1042 (Wyo.1993) (quoting *Rasmussen v. Baker*, 7 Wyo. 117, 133, 50 P. 819, 823 (1897)). We construe the statute as a whole, giving effect to every word, clause, and sentence, and we construe together all parts of the statute *in pari materia*. *State Department of Revenue and Taxation v. Pacificorp*, 872 P.2d 1163, 1166 (Wyo.1994)." *Chevron U.S.A., Inc. v. Department of Revenue*, 2007 WY 79, ¶ 15, 158 P.3d 131, 136 (Wyo. 2007).

22. The Wyoming Supreme Court has previously summarized a number of useful precepts concerning statutory interpretation:

In interpreting statutes, our primary consideration is to determine the legislature's intent. All statutes must be construed in *pari materia* and, in ascertaining the meaning of a given law, all statutes relating to the same subject or having the same general purpose must be considered and construed in harmony. Statutory construction is a question of law, so our standard of review is de novo. We endeavor to interpret statutes in accordance with the legislature's intent. We begin by making an inquiry respecting the ordinary and obvious meaning of the words employed according to their arrangement and connection. We construe the statute as a whole, giving effect to every word, clause, and sentence, and we construe all parts of the statute in *pari materia*. When a statute is sufficiently clear and unambiguous, we give effect to the plain and ordinary meaning of the words and do not resort to the rules of statutory construction. Moreover, we must not give a statute a meaning that will nullify its operation if it is susceptible of another interpretation.

Moreover, we will not enlarge, stretch, expand, or extend a statute to matters that do not fall within its express provisions.

Only if we determine the language of a statute is ambiguous will we proceed to the next step, which involves applying general principles of statutory construction to the language of the statute in order to construe any ambiguous language to accurately reflect the intent of the legislature. If this [Board] determines that the language of the statute is not ambiguous, there is no room for further construction. We will apply the language of the statute using its ordinary and obvious meaning.

BP Am. Prod. Co. v. Dep't of Revenue, 2005 WY 60, ¶ 15, 112 P.3d 596, 604 (Wyo.2005) (internal citations and quotations omitted). We must accept statutes as they are written; neither omitting words that are included, nor including words that are omitted. *Id.*; *Hede v. Gilstrap*, 2005 WY 24, ¶ 6, 107 P.3d 158, 163 (Wyo.2005); *Fontaine v. Bd. of County Comm'rs of Park County*, 4 P.3d 890, 895 (Wyo.2000); *In re Adoption of Voss*, 550 P.2d 481, 485 (Wyo.1976).

Cheyenne Newspapers, Inc. v. Building Code Board of Appeals of the City of Cheyenne, 2010 WY 2, ¶ 9, 222 P.3d 158, 162 (Wyo.2010).

23. “The omission of words from a statute must be considered intentional on the part of the legislature. Words may not be supplied in a statute where the statute is intelligible without the addition of the alleged omission. Words may not be inserted in a statutory provision under the guise of interpretation. The Supreme Court will not read into laws what is not there.” *Matter of Adoption of Voss*, 550 P.2d 481, 485 (Wyo.1976) (citations omitted).

24. To address an apparent ambiguity, the State Board may resort to extrinsic aids to interpretation to confirm plain meaning. *Parker Land & Cattle Company v. Wyoming Game and Fish Commission*, 845 P.2d 1040, 1043 (Wyo.1993). The State Board will give deference to the statutory interpretation of an agency charged with administration of a statute, unless that interpretation is clearly erroneous. *Parker Land & Cattle Company v. Wyoming Game and Fish Commission*, 845 P.2d 1040, 1045 (Wyo.1993).

25. As the Wyoming Supreme Court expressed:

Any attempt to ascertain the powers of an administrative agency must begin with the proposition that only those powers expressly conferred by the legislature are granted to an agency.

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

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

26. The Wyoming Supreme Court stated:

[A]n administrative agency, as a creature of statute, must limit its activities to those authorized by the legislature:

It is axiomatic that an agency has and may properly exercise only those powers authorized by the legislature. An agency is wholly without power to modify, dilute or change in any way the statutory provisions from which it derives its authority. When an administrative agency takes an action that exceeds its

authority or proceeds in a manner unauthorized by law, that action is null and void.

Platte Dev. Co. v. State of Wyoming, Envtl. Quality Council, 966 P.2d 972, 975 (Wyo.1998).

Wyoming Dept. of Revenue v. Guthrie, 2005 WY 79, ¶ 18, 116 P.3d 1086, 1093 (Wyo.2005) (citations omitted).

27. “[L]egislative intent, manifested in the plain language of the statutes, is the controlling consideration” in the State Board’s interpretation of them. *In re Osenbaugh* 10 P.3d 544, 550 (Wyo.2000). This intent is the “vital part, and the essence of the law.” *Rasmussen v. Baker*, 7 Wyo. 117, 128, 50 P. 819, 821 (1897). In keeping with the legislature’s intent, the State Board endeavors to give statutes a “reasonable, practical construction.” *Story v. State*, 755 P.2d 228, 231 (Wyo.1988) (citation omitted); *KP v. State*, 2004 WY 165, ¶ 22, 102 P.3d 217, 224 (Wyo.2004). We do not construe statutes “in a manner producing absurd results. *State v. Sodergren*, [686 P.2d 521 (Wyo.1984)], *supra*.” *Story v. State, supra*, 755 P.2d at 231. Put another way, “[w]hen a statute is as clear as a glass slipper and fits without strain, courts should not approve an interpretation that requires a shoehorn.” *Demko v. United States*, 216 F.3d 1049, 1053 (Fed. Cir. 2000).

28. The Wyoming Supreme Court expressed “administrative agencies are bound to comply with their enabling statutes. An administrative rule or regulation which is not expressly or impliedly authorized by statute is without force or effect if it adds to, changes, modifies, or conflicts with an existing statute. Conversely, a rule or regulation which is expressly or impliedly authorized by the enabling statute will be given force and effect.” *Billings v. Wyo Bd. Of Outfitters and Guides*, 2001 WY 81 ¶ 24, 30 P.3d 557, 568-569 (Wyo.2001) (citations omitted); *quoted in Diamond B Services, Inc. Rohde*, 2005 WY 130, ¶ 60, 120 P.3d 1031, 1048 (Wyo.2005); *See BP America Production v. Dept. of Revenue*, 2006 WY 27, ¶ 28, 130 P.3d 438, 466-467 (Wyo.2006).

29. As a political subdivision of the State, a county has no powers other than those granted by Wyoming’s constitution or its statutes, as well as those powers which can reasonably be implied from expressly granted powers. *Board of County Comm’rs v. Exxon Mobil Corp.*, 2002 WY 151, ¶ 22, 55 P.3d 714, 721 (Wyo.2002) (*citing River Springs Ltd. Liability Co. v. Board of County Comm’rs of County of Teton*, 899 P.2d 1329, 1335 (Wyo.1995); *Dunnegan v. Laramie County Comm’rs*, 852 P.2d 1138, 1142 (Wyo. 1993)).

30. The Wyoming Supreme Court stated:

Like courts, administrative agencies must have jurisdiction before they can hear a case. Whether a court or agency has jurisdiction to decide a particular matter is a question of law, subject to *de novo* review.

An administrative agency is limited in the authority to powers legislatively delegated. Administrative agencies are creatures of statute and their power is dependent upon statutes, so that they must find within the statute warrant for the exercise of any authority which they claim.

Amoco Prod. Co. v. Wyo. State Bd. of Equalization, 12 P.3d 668, 673 (Wyo.2000) (citations omitted).

Exxon Mobil v. Wyoming Dept. of Revenue, 2011 WY 161, ¶ 24, 266 P.3d 944, 951 (Wyo.2011).

31. The Wyoming Supreme Court said:

The concept of subject matter jurisdiction is applicable equally to courts and administrative agencies. An agency does not have discretion in determining whether or not it has subject matter jurisdiction; subject matter jurisdiction either exists or it does not. If an agency lacks subject matter jurisdiction, any proceeding conducted by it has a fundamental defect “which cannot be cured by waiver or consent of the parties.”

Amoco Production v. Bd. of Equalization, 7 P.3d 900, 904 (Wyo.2000) (citations omitted).

32. The Wyoming Supreme Court stated:

“The issue of subject matter jurisdiction is so fundamental that it cannot be waived, can be raised on court’s own motion and can be raised at any time, even on appeal.” Subject matter jurisdiction refers to “the power to hear and determine cases of general class to which the proceedings in question belong.” Like a court, an administrative agency is required to have subject matter jurisdiction before it can hear a case.

Diamond B Services, Inc. v. Rohde, 2005 WY 130, ¶ 13, 120 P.3d 1031,1038 (Wyo. 2005); *see Bruns v. TW Services, Inc.*, 2001 WY 127, ¶ 16, 36 P.3d 608, 613-614 (Wyo.2001) .

33. The Wyoming Supreme Court also stated:

It is well established that: An administrative agency is limited in authority to powers legislatively delegated. “Administrative agencies are creatures of statute and their power is dependent upon statutes, so that they must find within the statute warrant for the exercise of the authority which they claim.”

Amoco Production Co. v. State Bd. of Equalization, 12 P.3d 668, 673 (Wyo.2000) (citations omitted). “An agency is wholly without power to modify, dilute or change in any way the statutory provisions from which it derives its authority.” Thus, administrative agencies are bound to comply with their enabling statutes. ... (An agency’s “implied powers are only those derived by necessary implication from express statutory authority granted to the agency.”

Disciplinary Matter of Billings, 2001 WY 81, ¶ 24, 30 P.3d 557, 568-569 (Wyo.2001) (citations omitted); *quoted in Diamond B Services, Inc. v. Rohde*, 2005 WY 130, ¶ 60, 120 P.3d 1031, 1048 (Wyo.2005).

34. The Wyoming Constitution, article 5, section 10, provides in part:

The district court shall have original jurisdiction of all causes both at law and in equity and in all criminal cases, of all matters of probate and insolvency and of such special cases and proceedings as are not otherwise provided for.

35. Wyoming Statutes regarding an action to quiet title states:

An action may be brought by a person in possession of real property against any person who claims an estate or interest therein adverse to him, for the purpose of determining the adverse estate or interest. The person bringing the action may hold possession himself or by his tenant.

Wyo. Stat. Ann. § 1-32-201.

36. Wyoming Statutes regarding a petition in an action to recover realty states:

In an action to recover property it is sufficient if the plaintiff’s petition states that he has a legal estate in and is entitled to possession of the real property, describing the same with sufficient certainty as to enable an officer holding an execution to identify it, and that the defendant unlawfully keeps

him out of possession. It is not necessary to state how the plaintiff's estate or ownership is derived.

Wyo. Stat. Ann. § 1-32-202.

37. Offer of proof is defined as:

An offer of proof, which may also be used to persuade the court to admit the evidence, consists of three parts: (1) the evidence itself, (2) an explanation of the purpose for which it is offered (its relevance), and (3) an argument supporting admissibility. Such an offer may include tangible evidence or testimony (through questions and answers, a lawyer's narrative description, or an affidavit).

Black's Law Dictionary 1114 (8th ed. 2004).

38. Prima facie case is defined as:

1. The establishment of a legally required rebuttable presumption. 2. A party's production of enough evidence to allow the fact-trier to infer the fact at issue and rule in the party's favor.

Black's Law Dictionary 1228 (8th ed. 2004) (citations omitted).

39. The Wyoming Constitution, article 1, section 6, provides "[n]o person shall be deprived of life, liberty or property without due process of law."

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

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

While it is a principle so obvious that it has little attention in our jurisprudence, there can be no question that due process considerations are invoked in administrative proceedings. *ANR Production Co. v. Wyoming Oil and Gas Conservation Comm'n*, 800 P.2d 492 (Wyo.1990); *Jackson v. State ex rel. Wyoming Workers' Compensation Div.*, 786 P.2d 874 (Wyo.1990). Certainly, a failure to follow the statutory procedures must be considered in determining whether a party has been afforded that process which is due.

Amoco Production v. State Bd of Equalization, 882 P.2d 866, 872 (Wyo.1994); see *Amoco Production Company v. Wyoming State Board of Equalization*, 7 P.3d 900, 905 (Wyo.2000).

42. The Wyoming Supreme Court recognized:

Due process is a flexible concept which calls for such procedural protections as the time, place and circumstances demand. In order to determine the specific dictates of due process in a given situation, it is necessary to balance three distinct factors: (1) the private interest that will be affected by the official action; (2) the risk of an erroneous deprivation of such interest through the procedures used, along with the probable value, if any, of additional or substitute procedural safeguards; and (3) the government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirements would entail.

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

Discussion of Issues

43. Taxpayer's assessment protest before the County Board was unusual. Taxpayer requested the County Board to add property it allegedly owned to its assessment notice and increase the assessed value. Taxpayer claimed that a certain property, 605 Comanche Lane in Buffalo, Wyoming was improperly or illegally conveyed to another and that Taxpayer had an interest in that property. *Supra* ¶¶ 1-2.

44. Taxpayer's protest before the County Board was dismissed upon a motion filed by the Assessor, in which the Assessor argued the County Board did not have jurisdiction to hear Taxpayer's request, and Taxpayer did not have standing to bring its request to the County Board. *Supra* ¶¶ 4, 7.

45. A threshold question in every matter before a court or an agency in a contested case is whether it has jurisdiction to hear the matter in controversy brought before it. Subject matter jurisdiction applies to an agency, including the County Board, on matters brought before it. *Supra* ¶¶ 28-32.

46. A taxpayer's written notice of an assessment protest filed with the county assessor and the county board of equalization invokes the subject matter jurisdiction available to those governmental agencies. In order to determine the full nature of the subject matter jurisdiction of a county board of equalization, the State Board will look to the enabling statute which authorizes the county board of equalization and sets the duties. *Supra* ¶¶ 13-14.

47. Four Wyoming Statutes must be considered in this matter:

A. Wyoming Statutes section 39-13-102(c)(iv), states a county board shall "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).**" (emphasis added).

B. Wyoming Statutes section 39-13-109(b)(i) relating to an assessment protest states "[a]ny person wishing to contest an assessment of **his property** shall file not later than thirty (30) days after the date of the assessment schedule properly sent **pursuant to W.S. 39-13-103(b)(vii)**, a statement with the county assessor specifying the reasons why the assessment is incorrect." (emphasis added).

C. Wyoming Statutes section 39-13-109(b)(i)(A) states all taxable property in Wyoming "shall be annually listed, valued and assessed for taxation in the county in which located and in the name of the **owner of the property on January 1.**" (emphasis added).

D. Wyoming Statutes section 39-13-103(b)(vii) states the "county assessor shall mail all assessment schedules to taxpayers **at their last known address.**" (emphasis added). *Supra* ¶¶ 9-14.

48. The Assessor mailed Taxpayer an assessment notice pertaining to Condominium Building Number 4 of the Village at Comanche Cove Condominiums to 606 Comanche Lane in Buffalo, Wyoming. The Assessor mailed an assessment notice to the owner or taxpayer of Condominium Building Number 3 of the Village at Comanche Cove Condominiums, at 605 Comanche Lane in Buffalo, Wyoming. The Assessor complied with the requirement of Wyoming Statutes section 39-13-103(b)(vii). There was no other requirement under Wyoming Statutes or Department rules for the Assessor to make further determination of ownership of record. *Supra* ¶¶ 1, 9-12.

49. Taxpayer's written protest clearly describes the property being protested as "Condominium Building Number 3 of the Village at Comanche Cove Condominiums, City of Buffalo, Wyoming, in Lots 19, 20, 21, and 22, Block 3 of the 4-K addition." This property was not, by the recorded deed, owned by Taxpayer. *Supra* ¶¶ 2, 4.

50. Taxpayer's brief explanation why the Assessor's estimated market value was incorrect was "[t]he owner shown on the 2012 notice of assessment has no ownership interest in the common elements/land/real estate the structure sits on." [County Board Record, pp. 1-5]; *supra* ¶ 2.

51. Taxpayer also stated in its written protest "Ms. Lick does not own Unit #3, located at 605 Comanche Lane, the original 5 purchasers or their successors in interest each own a 1/5th (20%) interest in the house and their assessment notices should reflect this fact." *Supra* ¶ 2.

52. The underlying issue raised by Taxpayer's protest was who owned the property located at 605 Comanche Lane in Buffalo, Wyoming. The Assessor, relying on a recorded warranty deed, made a determination of ownership and issued an assessment notice to the owner of record for Unit #3. *Supra* ¶¶ 2, 4, 9-12.

53. Taxpayer asserted ownership in the Unit #3 property located at 605 Comanche Lane and asserted the owner listed by the Assessor did not own the property. There cannot be any clearer question of ownership. Taxpayer's request that its assessment be increased is only secondary to a determination of the actual property ownership. *Supra* ¶¶ 2, 4, 9-12.

54. This Board cannot discern where the Wyoming Legislature provided authority for a county assessor or a county board of equalization to resolve disputed ownership in real property. No statute authorizes an assessor or county board to resolve private ownership interests. *Supra* ¶¶ 9-14. There is no authority to resolve property ownership disputes which can be read into the enabling statutes for an assessor or a county board of equalization. *Supra* ¶¶ 15-23, 25-33. The authority to resolve ownership of property lies with a district court in an action to quiet-title, or for ejectment. *Supra* ¶¶ 34-36. Only after the ownership of the disputed property is resolved by a district court, may a proper assessment be made by the Assessor, if necessary. The county board of equalization was simply not the proper forum to resolve the ownership dispute. *Supra* ¶¶ 24, 28-36.

55. The Assessor's assessment notice on the property at 605 Comanche Lane was based upon the information in a recorded and filed deed. The Assessor made a prima facie showing that a dismissal of Taxpayer's protest, based upon its assertion of ownership, was proper because Taxpayer was not the owner of record. *Supra* ¶¶ 1, 4, 7, 9-12, 38.

56. Taxpayer, in its Notice of Appeal to this Board, claimed it was not given due process because “it was denied the opportunity to present evidence as to ownership in Lot 22 which includes the residential improvements described by the Assessor as Condominium Building Number 3.” [Notice at pp. 2-3]. Procedural due process is always an important matter for the State Board to consider. *Supra* ¶¶ 40-42.

57. Taxpayer had notice of the hearing, and had ample opportunity to present evidence on its position during the hearing before the County Board on Assessor’s Motion to Dismiss. Taxpayer stated it would provide evidence of ownership during the protest hearing that was scheduled later. [County Board Record, Hearing Recording]. Taxpayer did not make an offer of proof during the hearing on the Motion to Dismiss. [County Board Record, Hearing Recording]. The only evidence before the County Board was the warranty deed attached to the Assessor’s Motion to Dismiss that indicated ownership of Unit #3 located at 605 Comanche Lane belonged to another party other than Taxpayer. Taxpayer’s argument that it was not trying to show the owner of record, as indicated in the deed attached to Assessor’s Motion to Dismiss, did not actually own the property, but rather Taxpayer should be paying the taxes on that property’s assessment was unpersuasive. *Supra* ¶¶ 2, 3, 5, 7, 40-42.

58. The County Board made findings in the order dismissing Taxpayer’s appeal which supported its decision. *Supra* ¶ 7, 24, 29-33. Finding that it did not have subject matter jurisdiction to resolve the ownership issue Taxpayer was protesting, the County Board concluded the matter should be dismissed. This Board agrees. Because the County Board lacked subject matter jurisdiction, it is unnecessary for this Board to consider the remaining issues in this appeal. The decision by the County Board to dismiss Taxpayer’s protest appeal was not arbitrary, capricious, an abuse of discretion or otherwise not in accordance with law.

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ORDER

IT IS ORDERED the Johnson County Board of Equalization Order Dismissing Appeal for lack of Standing and Subject Matter Jurisdiction 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 3rd day of April, 2013.

STATE BOARD OF EQUALIZATION


Steven D. Olmstead, Chairman


Paul Thomas Glause, Vice-Chairman


E. Jayne Mockler, Board Member

ATTEST:


Jana R. Fitzgerald, Executive Assistant

CERTIFICATE OF SERVICE

I hereby certify that on the 3rd day of April, 2013, 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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