

BEFORE THE STATE BOARD OF EQUALIZATION
FOR THE STATE OF WYOMING

IN THE MATTER OF THE APPEAL OF)	
ROBERT AND GISELA BALTENSPERGER)	
FROM A DECISION OF THE TETON)	Docket No. 2012-89
COUNTY BOARD OF EQUALIZATION -)	
2011 PROPERTY VALUATION)	

DECISION AND ORDER

APPEARANCES

Robert Baltensperger appeared *pro se* on behalf of Robert and Gisela Baltensperger (Taxpayers or Petitioners).

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

DIGEST

Petitioners appealed the Teton County Board of Equalization (County Board) decision entered on August 1, 2011, regarding the 2011 valuation of their property to the Wyoming State Board of Equalization (State Board). The State Board remanded that decision to the County Board for further proceeding. *See In re Robert & Gisela Baltensperger*, Docket No. 2011-87, July 16, 2012, 2012 WL 8302070 (Wyo. St. Bd. Eq.). The County Board entered another Decision of the Teton County Board of Equalization in this matter on November 20, 2012. The Petitioners appealed the subsequent decision regarding the 2011 valuation of their property to the State Board. On March 6, 2013, the State Board, after review of the file in this matter, ordered the County record in Docket No. 2011-87 be brought forward to be considered in this matter. On March 2, 2013, the Petitioners filed a motion to Supplement the Record from the November 20, 2012, County Board decision in this matter. On April 18, 2013, the Assessor filed an objection to Petitioners' Motion to Supplement the Record. The essence of the Assessor's objection was the requested documents were not evidence submitted and considered in the original hearing before the County Board in 2011. Petitioner's motion was granted in part and denied in part by the State Board's Order dated

April 24, 2013. On April 30, 2013, the County Board filed additional documents pursuant to the State Board's order. Petitioners filed an Opening Brief on May 2, 2013. Respondent filed a Response Brief of the Teton County Assessor on May 29, 2013. On May 31, 2013, Petitioners filed a Supplemental Opening Brief, and on July 3, 2013, Petitioners filed a Reply Brief. Neither party requested oral argument.

The State Board¹, comprised of Chairman Steven D. Olmstead and Board Member E. Jayne Mockler, considered the Petitioners' Notice of Appeal, the Record from the County Board, and the briefs of the parties.

The State Board evaluated the Petitioners' appeal of the County Board decision against its standard of review which is whether the decision was arbitrary, capricious, unsupported by substantial evidence, or contrary to law. *Rules, Wyoming State Board of Equalization, Chapter 3 § 9*. Based on that review, the Decision of Teton County Board of Equalization dated November 20, 2012, is affirmed.

ISSUES

The Petitioners presented the following contentions on appeal:

1. [T]he County Board violated the Petitioner's due process rights and failed to act in accordance with the law in relation to the September 11, 2012, and November 20, 2012 hearings.
2. [T]he County Board's decision upholding the Assessor's valuation of Petitioner's property for 2011 tax purposes was wrong on the merits.

[*Petitioners' Opening Brief*, p. 6].

The Assessor stated the following issues:

1. Whether the Teton County Assessor correctly determined the land value for the subject property?

¹ Vice Chairman Paul Thomas Glauser resigned from the State Board effective January 2, 2015.

2. Whether the Teton County Board of Equalization complied with the State Board of Equalization's Decision and Order of July 16, 2012?

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

The Board restates the issue before it as follows: Was the County Board decision affirming the County Assessor's 2011 valuation of the Baltensperger property arbitrary, capricious, an abuse of discretion or otherwise not in accordance with law, in excess of statutory jurisdiction, authority or limitations or lacking statutory right, or unsupported by substantial evidence?

PROCEEDINGS BEFORE THE COUNTY BOARD

Taxpayers originally appealed the Assessor's 2011 valuation of their property to the County Board on May 23, 2011. After a hearing conducted before a hearing officer, the County Board ratified the proposed findings of fact, conclusions of law and recommendations of the hearing officer on August 1, 2011. (References in this opinion to the 2011 proceeding will be referred to as County Board Record.) Taxpayers appealed that decision to the State Board. The State Board remanded the case to the County Board because the County Board had not provided the Taxpayers with an opportunity to file exceptions to the hearing officer's proposed order, and it was not clear from the record that the County Board had carefully reviewed the record prior to ratifying the proposed order. *In re Robert & Gisela Baltensperger*, Docket No. 2011-87, July 16, 2012, 2012 WL 8302070 (Wyo. St. Bd. Eq.).

After the remand, the County Board met on September 11, 2012, and established that all members of the County Board had reviewed the record in this appeal. The County Board then directed the hearing officer to resubmit his proposed findings of fact, conclusions of law and recommendations and gave the Taxpayers until November 19, 2012, to file any exceptions to the hearing officer's proposed recommendations. Taxpayers timely filed their exceptions to the recommendation of the hearing officer. The County Board met on November 20, 2012. The County Board reviewed the exceptions, as well as Taxpayers' various documents, some of which were unrelated to the 2011 property valuation process of the County Assessor. The County Board had indicated that this matter was not reopened for additional evidence. Upon review of the record and the Taxpayers' exceptions, the County Board ratified the recommendations of the hearing officer regarding the valuation of Petitioners' property for 2011. (References in this opinion to the 2012 proceeding will be referred to as County Board Record II.).

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 interpreting Wyoming Statutes section 16-3-114(c) for guidance. For example, we must apply this substantial evidence standard:

When an appellant challenges an agency’s findings of fact and both parties submitted evidence at the contested case hearing, we examine the entire record to determine if the agency’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 agency's findings of fact are supported by substantial evidence, we will not substitute our judgment for that of the agency 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 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. Dep't 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 Electric Power Coop., Inc. v. Dep't of Revenue, 970 P.2d 841, 850-851 (Wyo. 1998) (citations omitted), quoted in *Britt v. Fremont County Assessor*, 2006 WY 10, ¶ 17, 126 P.3d 117, 123 (Wyo. 2006); *Union Pacific R.R. Co. v. Bd. of Equalization*, 802 P.2d 856, 860 (Wyo. 1990).

We also apply this “arbitrary and capricious” standard:

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

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

FACTS PRESENTED TO THE COUNTY BOARD

1. Taxpayers own 4.12 acres of vacant residential property located in Teton County, Wyoming. The legal description of the property is Part of Lot 1, Sec. 30, TWP 44, RNG 118 (Tract D) Teton County, Wyoming. The property is located in western Teton County in the Alta, Wyoming area. [County Board Record, p. 4; Tr. pp. 8-10].
2. In the 2011 Notice of Assessment, the Assessor established the 2011 fair market value for Taxpayers’ property at \$447,081. The 2011 Notice of Assessment indicated a zero dollar increase over the 2010 fair market value of \$447,081. [County Board Record, p. 4; Tr. p. 11].
3. The 2011 Notice of Assessment was mailed to Petitioners on April 22, 2011. On May 17, 2011, Petitioners filed an appeal from the County Assessor’s 2011 valuation of their property. The County Clerk set the hearing on the matter before the County Board for July 20, 2011, at 4:30 p.m. A hearing was held in this matter on July 20, 2011, before the County Board’s hearing officer. [County Board Record, pp. 1, 4-5, 30-33].
4. The County Assessor at the time of the valuation and hearing, Dawn Johnson, testified during Taxpayers’ hearing. She had a prepared a typed narrative and introduced Exhibits A through E, as well as Exhibits 1 and 2, which were accepted into the record. [County Board Record, pp. 8-24, 32; Tr. p. 48].

5. Ms. Johnson was permanently certified by the Wyoming Department of Revenue as a Property Tax Appraiser. She determined the 2011 fair market value of the Taxpayers' property was \$447,081. The valuation of Taxpayers' property had not changed since the 2010 valuation. [County Board Record, p. 20; Tr. pp. 7-12].

6. Taxpayers' property is located in Land Economic Area (LEA) 0507, which is comprised of the entire Alta, Wyoming area. [County Board Record, Tr. p. 13].

7. Ms. Johnson detailed the methodology she used to establish the value of Taxpayers' property, including a review of available sales, characteristics and the location of the property. Based upon the sales that occurred in LEA 0507, she determined there were not enough valid vacant land sales in 2010, nor in 2008 and 2009, to meet the Department's required minimum five sales. [County Board Record, Tr. pp. 13-17].

8. Because there were not sufficient valid vacant land sales within LEA 0507 during a three year period, the Assessor explained four different ways to determine fair market value if there are not enough valid sales. The four methods are restratification, extending the period from which sales are drawn, enlarging the sample size by validating previously rejected sales, and imputing appraisal performance. [County Board Record, Tr. pp. 15-17].

9. Ms. Johnson discussed the different methods and the result of those studies. The result was that the Assessor used 34 vacant land sales that occurred in 2010 within the LEAs in Teton County that did not have sufficient valid sales to determine a value for LEA 0507. After further review, the Assessor determined that the median and mean sales ratio for the 34 sales was .9486. The State Board requires the ratio to be between 95 and 105 percent of those sales. The State Board approved the slightly smaller ratio. The overall result of the appraisal by Ms. Johnson resulted in no increase in value of the Taxpayers' property from 2010 to 2011. [County Board Record, p. 20; Tr. pp. 15-20].

10. A review of Taxpayers' suggested comparables was made by Ms. Johnson. Some of those comparables were in fact used in her studies and others failed to meet the standard because they were either a short sale, or not comparable because of a conservation easement, or the sale was more than three years old. Also, the listing price for properties for sale are not valid for comparison, only the sales price would be valid. [County Board Record, Tr. pp. 22-26, 41].

11. Mr. Baltensperger cross examined the Assessor, as well as testified and introduced three exhibits during the hearing. Taxpayers' first exhibit, marked PO-1, was a three page exhibit consisting of a map of the Alta, Wyoming area, along with two pages of copies of tax records from the County Assessor website. The first page concerned the Taxpayers'

property. The second page concerned another property located at 735 W. Alta Ski Hill Road. Taxpayers' second exhibit was a partial or composite copy of a Teton County 2010 Tax Notice and a partial or composite copy of a 2011 Notice of Assessment for 3905 W North Fork Fall Creek Road, Lot #4, Country Estates Subdivision. Taxpayers' third exhibit was a partial or composite copy of a Teton County 2010 Tax Notice and a partial or composite copy of a 2011 Notice of Assessment for 3950 W. North Fork Fall Creek Road, Lot #5, Country Estates Subdivision. [County Board Record, pp. 25-29; Tr. pp. 28-35].

12. Mr. Baltensperger stated Taxpayers were the record owners of the properties identified in the second and third Taxpayers' exhibits. [County Board Record, pp. 28-29, 32; Tr. pp. 28-29].

13. Mr. Baltensperger wanted to compare his properties located in the "Red Top" area of Teton County to his property located in the Alta, Wyoming area. He opined the property located in the Alta, Wyoming area was less valuable than the Red Top area properties. [County Board Record, pp. 28-29, 32; Tr. pp. 28-29].

14. After the original decision of the County Board was remanded, the County Board met on September 11, 2012. In addition to the County Board members, Sherry Daigle, Teton County Clerk, Dawn Johnson, Teton County Assessor, Keith Gingery, Deputy Teton County and Prosecuting Attorney, and Sandy Birdyshaw, Deputy County Clerk, were present. The hearing officer participated by telephone. No notice of the meeting was given to the Taxpayers. [County Board Record II, p. 6].

15. At the County Board meeting on September 11, 2012, each County Board member declared they had carefully reviewed the record from the previous proceedings regarding Taxpayers' appeal. The County Board then directed the hearing officer to resubmit his recommended findings of fact, conclusions of law, and proposed order. The County Board gave Taxpayers until November 19, 2012, to file exceptions to the hearing officer's recommendations and proposed order and invited Taxpayers to attend a hearing set for November 20, 2012. [County Board Record II, pp. 7, 9].

16. The Taxpayers submitted exceptions to the hearing officer's recommendations and proposed order before the November 20, 2012, County Board hearing. Taxpayers presented various documents or copies of documents as the exceptions. Among the documents was the 2012 Teton County Notice of Assessment and 2012 Property Tax Statement pertaining to the Alta, Wyoming property. Also included in the exceptions documents were copies of letters from Taxpayers to the Assessor questioning the 2012 assessment and taxes pertaining the Alta, Wyoming property. Taxpayers addressed the County Board regarding the exceptions during the November 20, 2012, hearing. The County Board members reviewed

and considered the documents in Taxpayers' exceptions. The County Board did not change its decision based upon the exceptions or documents submitted by Taxpayers, nor did the County Board consider a rehearing on the matter. [County Board Record II, p. 19; Exceptions Supp. pp. 23-24, 28-29; November 20, 2012 County Board Hearing Recording].

17. The County Board adopted the recommendations and proposed order of the hearing officer on November 20, 2012, affirming the Assessor's fair market value of the Taxpayers' property at \$447,081. [County Board Record II, p. 19; November 20, 2012 County Board Hearing Recording].

APPLICABLE LAW AND DISCUSSION OF ISSUES

18. The State Board is required to "hear appeals from county boards of equalization." *Wyo. Stat. Ann. § 39-11-102.1(c)*. The Petitioners timely filed an appeal from the County Board's decision entered on November 20, 2012, with the State Board effective December 17, 2012, and the State Board has jurisdiction to consider this appeal. *Rules, Wyoming State Board of Equalization, Chapter 3 § 2*.

Applicable Law

19. The Wyoming Constitution article 15, § 11(b) provides in pertinent part: "All 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."

20. The Wyoming Constitution article 15, § 11(d) requires: "All 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."

21. 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." *Teton [Valley Ranch v. State Bd. of Equalization]* 735 P.2d [107] at 115.

Holly Sugar Corp. v. State Board of Equalization, 839 P.2d 959, 964 (Wyo. 1992), *quoted in Basin Electric Power Coop. Inc. v. Dept. of Revenue*, 970 P.2d 841, 857 (Wyo. 1998). 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).

22. 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).

23. All property must be valued annually at fair market value. *Wyo. Stat. Ann. § 39-13-103(b)(ii)*. Further, all taxable property must be valued and assessed for taxation in the name of the owner of the property on January 1. *Wyo. Stat. Ann. § 39-13-103(b)(i)(A)*.

24. 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).

25. Exception is defined as:

1. A formal objection to a court's ruling by a party who wants to preserve an overruled objection or rejected proffer for appeal.

Black's Law Dictionary 682 (10th ed. 2014)

26. 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).

27. The Department is required 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), (xix)*. In particular, the Department "shall 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)*.

28. The Department promulgated rules, Chapter 9, Property Tax Valuation Methodology and Assessment (County Assessments), Section 5 (Feb. 23, 2011) to provide appraisal methodologies for county assessors. Section 5 includes the "Sales Comparison Approach."

Section 5. Appraisal Methods.

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 for 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) (2010), Uniform Standards of Professional Appraisal Practice (USPAP) Standard 6 (2010-2011), IAAO Standard on Property Tax Policy (2010) and IAAO Standard on Valuation of Personal Property (2004).

(i.) The Sales Comparison Approach. The comparable sales approach is an appropriate method of valuation when there are an adequate number of reliable arms length sales and the properties subject to such sales are similar to the property being valued. For land valuation, the sales comparison is the preferred method of valuation. In the absence of adequate vacant land sales, other techniques may be used including allocation, abstraction, anticipated use, capitalization of grant (sic) rents and land residual capitalization. For improved property, the sales comparison approach using market adjusted RCNLD plus land value or other market modeling techniques are the preferred method of valuation. Comparable sales shall be adjusted to reflect differences in time, location, size, physical attributes, financing terms or other differences which affect value. The use of this approach to value depends upon:

- (A.) The availability of comparable sales data;
- (B.) The verification of the sales data;
- (C.) The degree of comparability or extent of adjustment necessary for time differences; and
- (D.) The absence of non-typical conditions affecting the sales price.

Rules, Wyoming Department of Revenue, Chapter 9 § 5(i.).

29. An assessor is required to annually value property within the assessor's county for tax purposes at its fair market value. In completing this task, an assessor is required to "[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)*.

30. An assessor's valuation is presumed valid, accurate, and correct. This presumption survives until overturned by credible evidence. *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 Mc Dermott & Co. v. Hudson*, 370 P.2d 364, 370 (Wyo. 1962). This presumption is 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 § 7*. "The burden is on the taxpayer to establish any overvaluation." *Hillard v. Big Horn Coal Co.*, 549 P.2d 293, 294 (Wyo. 1976).

31. 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).(xxiv.).

32. The Wyoming Supreme Court has stated: "[s]ubstantial evidence in this context means 'such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.' Findings of fact are supported by substantial evidence if, from the evidence preserved in the record, we can discern a rational premise for those findings." (citations omitted). *Bush v. State ex rel Wyo. Workers' Comp. Div.*, 2005 WY 120, ¶ 5, 120 P.3d 176, 179 (Wyo. 2005). See also *Stevens v. State ex rel, Wyo. Workers' Comp. Div.*, 2014 WY 153, ¶ 31, 338 P.3d 921, 928 (Wyo. 2014). The Wyoming Supreme Court has also recognized: "The arbitrary and capricious standard remains a 'safety net' to catch agency action which prejudices a party's substantial rights or which may be contrary to the other W.A.P.A. review standards yet is not easily categorized or fit to any one particular standard." *Dale v. S & S Builders, LLC.*, 2008 WY 84, ¶ 23, 188 P.3d 554, 561 (Wyo. 2008); *Laramie County Sheriff's Department v. Kenneth Cook*, 2012 WY 47, ¶¶ 11-12, 272 P.3d 966, 970 (Wyo. 2012).

33. The Wyoming Supreme Court has stated: "Procedural due process principles require reasonable notice and a meaningful opportunity to be heard before government action may substantially affect a significant property interest." *Amoco Production Company v. Wyoming State Board of Equalization*, 7 P.3d 900, 905 (Wyo. 2000) (quoting *Pfeil v. Amax Coal West, Inc.*, 908 P.2d 956, 961 (Wyo.1995)).

While it is a principle so obvious that it has received 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 Company v. Wyoming State Board of Equalization, 882 P.2d 866, 872 (Wyo.1994).

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

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

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

Discussion of Issues

35. This is the second time this matter has been appealed to the State Board. The first time it was appealed, the matter was remanded to the County Board because of procedural issues. This time the matter will be decided on the merits of the case. Taxpayers made timely appeals both instances. *Supra* ¶¶ 3, 18, 24.

36. This case turns on the question of whether there is substantial evidence in the record that reasonably supports the County Board's decision. In determining whether there is substantial evidence in the record, 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. Wyoming State Board of Equalization*, 915 P.2d 1184, 1189 (Wyo. 1996); *Holly Sugar Corp. v. 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. *Supra* ¶¶ 14-18, 32.

37. Throughout the proceedings, Taxpayers argued the subject property was not valued fairly and equitably with other similar properties, especially with other properties Taxpayers owned. However the evidence presented by Taxpayers failed to demonstrate the Assessor did not properly follow the statutes and Department rules and regulations or that her actions were arbitrary and capricious. *Supra* ¶¶ 10-13, 19-23.

38. The Assessor's procedures to arrive at a fair market value of Taxpayers' property shows she clearly followed the constitution, statutes, and rules and regulations applicable to the valuation of vacant residential land. An assessor's valuation is presumed valid, accurate, and correct. This presumption is valid where the Assessor valued the property according to the Department's rules and regulations. *Rules, Wyoming Department of Revenue, Chapter 9 § 5*. "The burden is on the taxpayer to establish any overvaluation." *Hillard v. Big Horn Coal Co.*, 549 P.2d 293, 294 (Wyo. 1976). Taxpayers were unable to demonstrate the Assessor incorrectly or inappropriately applied the valuation methodology established by statute and the Department. Taxpayers merely expressed an opinion and compared the differences in the valuation of their lot to other lots which were either not comparables, or were not valid vacant lot sales, or sales that were more than three years old. *Supra* ¶¶ 1-13, 21, 28-30.

39. Taxpayers submitted evidence of the values of properties obtained in 2012, which were not reflective of market value for the 2011 tax year, as part of their exceptions filed with the County Board. The property values for 2012 were irrelevant and would not be considered for a 2011 property value. The Taxpayers did not meet the burden required to overcome the presumption in favor of the Assessor's valuation. *Supra* ¶¶ 16, 23, 25.

40. In their exceptions filed with the County Board for the November 20, 2012 hearing, Taxpayers submitted a copy of the Teton County 2012 Property Notice of Assessment and a copy of the Teton County 2012 Property Tax Statement for Taxpayers' property. These were among the many documents submitted by Taxpayers for consideration in this appeal. The documents pertaining to Teton County 2012 Property Notice of Assessment and the Teton County 2012 Property Tax Statement were new evidence, which the State Board will not consider in this appeal. Additionally, the State Board denied Taxpayers' motion to supplement the original record with these documents in this appeal by the State Board order dated April 24, 2013. *Supra* ¶¶ 15-16, 25.

41. Finally, the State Board must apply the arbitrary and capricious standard as a "safety net" in reviewing County Board actions which might violate the Wyoming Administrative

Procedures Act. Under the arbitrary and capricious standard, the State Board must review a County Board decision for inconsistent or incomplete findings of fact or any violation of due process. The County Board met on September 11, 2012, after this matter was remanded to them following the Taxpayers' first appeal to discuss how they should proceed. Everyone involved in the original hearing was present at that meeting, except Taxpayers. The County Board meeting on September 11, 2012, was held to discuss procedural matters and not to take additional evidence, nor for any party to make further argument. The County Board set another date, November 20, 2012, for further consideration in the matter and ordered that Taxpayers be given the opportunity to attend and to file any exceptions to the hearing officer's proposed decision and order with the County Board by November 19, 2012. The State Board does not find that this violates the Taxpayers' right to due process under the circumstances, as the September 11, 2012, hearing was held to discuss procedural matters and not for final adjudication. However, it would have been a better practice to give the Taxpayers notice of the September 11, 2012, meeting. The County Board complied with the requirements of Wyoming Statutes section 16-3-109, by allowing Taxpayers' to file their exceptions and appear before the County Board at the November 20, 2012 hearing. *Supra* ¶¶ 14-17, 32-34.

42. Taxpayers responded to the County Board's notice of the November 20, 2012, hearing and filed their exceptions and several documents with the County Board. Taxpayers appeared at the November 20, 2012 County Board hearing and was allowed to address the County Board. *Supra* ¶¶ 14-17, 32-34. Further, the evidence presented by Taxpayers failed to demonstrate the County Board's decision to approve the Assessor's valuation was arbitrary and capricious or not in accordance with the law. The County Board decision to adopt the hearing officer's recommendations and proposed order affirming the Teton County Assessor's 2011 valuation of Taxpayers' property in the amount of \$447,081, was not arbitrary, capricious, in excess of statutory jurisdiction, authority or limitations or lacking statutory right and was supported by substantial evidence. *Supra* ¶¶ 4-9, 11-13, 16-17, 21-22.

THE REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK.

ORDER

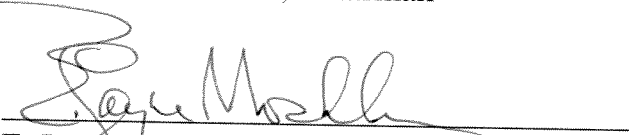
IT IS THEREFORE HEREBY ORDERED that the Decision of Teton County Board of Equalization dated November 20, 2012, affirming the Assessor's value of Petitioners' property for 2011, is **affirmed**.

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 30th day of January, 2015.

STATE BOARD OF EQUALIZATION


Steven D. Olmstead, Chairman


E. Jayne Mockler, Board Member

ATTEST:


Jana R. Reutlinger, Executive Assistant


CERTIFICATE OF SERVICE

I hereby certify that on the 30th day of January, 2015, 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:

Robert & Gisela Baltensperger
PO Box 491
Wilson, WY 83014

Andy Cavallaro
Teton County Assessor
PO Box 583
Jackson, WY 83001

Keith Gingery
Teton County Attorney's Office
PO Box 4068
Jackson, WY 83001



Jana R. Reutlinger, Executive Assistant
State Board of Equalization
P.O. Box 448
Cheyenne, WY 82003
Phone: (307) 777-6986
Fax: (307) 777-6363

cc: SBOE
Dan Noble, Director, Department of Revenue
Brenda Arnold, Property Tax Division, Department of Revenue
Treasurer - Teton County
CCH
ABA State and Local Tax Reporter
State Library
File