

BEFORE THE STATE BOARD OF EQUALIZATION

FOR THE STATE OF WYOMING

IN THE MATTER OF THE APPEAL OF)
DONALD M. AND MARIAN Y. JONES)
FROM A DECISION OF THE TETON) Docket No. **2012-92**
COUNTY BOARD OF EQUALIZATION -)
2011 PROPERTY VALUATION)

DECISION AND ORDER

APPEARANCES

Donald M. Jones, Jr., represented himself and Marian Y. Jones (Petitioners or Taxpayers).

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

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. *Donald M. and Marian Y. Jones*, Docket No. 2011-86, July 16, 2012, 2012 WL 8302069 (Wyo. St. Bd. Eq.). The County Board entered another Decision of Teton County Board of Equalization in this matter on November 20, 2012. The Petitioners appealed this subsequent decision regarding the 2011 valuation of their property to the State Board. On February 19, 2013, the Petitioners submitted a letter requesting the State Board rely on the information contained in their Notice of Appeal in lieu of filing a brief and also requested oral arguments. Respondent filed a Brief of the Teton County Assessor on May 9, 2013. Oral argument was held on August 1, 2013.

The State Board, comprised of Chairman Steven D. Olmstead, Vice Chairman Paul Thomas Glause and Board Member E. Jayne Mockler, considered the Petitioners' Notice of Appeal, the Record from the County Board, the Brief of the Teton County Assessor and the parties' oral arguments.

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]hat the County Assessor has made significant errors in the valuation of his residential improvements in 2011 and 2012.
2. [T]hat the assessed value of his home was significantly inconsistent with the other homes on his street and market condition indicated by sales in his neighborhood.

[*Petitioners' Notice of Appeal*, p. 2].

The Assessor stated the following issues:

1. Whether the Teton County Assessor correctly determined the market multiplier for Land Economic Area (LEA) 207 in Teton County, Wyoming?
2. Whether the Teton County Assessor accurately accounted for the square footage, quality of construction, quality of condition, and amenities of the residential improvement in determining the replacement value?

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

The Board restates the issues before it as follows:

1. Was the County Board decision affirming the County Assessor's 2011 valuation of the Jones' 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?
2. Whether the State Board has jurisdiction to consider the 2012 valuation of the Jones' property?

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.) The 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. *Donald M. and Marian Y. Jones*, Docket No. 2011-86, July 16, 2012, 2012 WL 8302069 (Wyo. St. Bd. Eq.).

The County Board met on September 11, 2012, and established that all members of the County Board had carefully 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 exceptions to the hearing officer's proposed recommendations. The County Board met on November 20, 2012, and 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).

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 residential property located at 6250 North Aspen Drive in Teton County, Wyoming. The legal description of the property is Lot 15, Block 1, Jackson Hole Golf and Tennis Club Estates, 3rd Filing, Teton County, Wyoming. [County Board Record pp. 4-5, 8; Tr. p. 8].

2. The Assessor established the 2011 fair market value for Taxpayers' property at \$1,227,224. This represented a \$22,000 increase over the 2010 fair market value of \$1,205,341. [County Board Record pp. 4, 29-30; Tr. p. 8].
3. The 2011 Notice of Assessment was mailed to Petitioners on April 22, 2011. [County Board Record, p. 4].
4. On Monday, May 23, 2011, Petitioners filed an appeal from the County Assessor's 2011 valuation of their property. [County Board Record, p. 5].
5. During the hearing before the County Board on July 25, 2011, Mr. Jones provided an analysis of the square foot cost of six of his neighbors' homes based upon the 2011 fair market value established by the Assessor. The square foot values ranged from a low of \$157.28 for a 4182 square foot home built in 1980, to a high of \$320.86 for a 4028 square foot home built in 2005. Mr. Jones calculated the square foot value for his 2377 square foot home built in 1998 was \$272.29. [County Board Record pp. 1, 27; Tr. pp. 41-45].
6. Mr. Jones offered a generalized opinion that his neighbors' homes are higher-end, with more expensive amenities, than the Taxpayers' home. [Tr. pp. 47-48].
7. The Taxpayers only protested the value of the improvements and not the land. A lot sold in the Taxpayers' neighborhood for \$580,000 and the Assessor valued all of the lots in the neighborhood with golf course frontage at \$580,000. This represented a decrease in the land value of \$164,480 from the 2010 land value of \$744,480. [County Board Record pp. 4-5, 8, 27, 29-30; Tr. p. 42]
8. Mr. Jones calculated the 2011 value of \$647,224 for the Taxpayers' improvements represented an increase of 24% over the 2010 value of \$520,666 for Taxpayers' improvements. Mr. Jones argued this increase was not justified in light of market conditions and was inconsistent with the square foot values of his neighbors' improvements. [Petitioners' Notice of Appeal; County Board Record, p. 6; Tr. pp. 64-65].
9. Dawn Johnson is the Teton County Assessor and is permanently certified by the Wyoming Department of Revenue as a Property Tax Appraiser. She testified at the hearing regarding her valuation of the Taxpayers' property. [County Board Record, p. 16; Tr. pp. 5-6].
10. Ms. Johnson determined the 2011 fair market value of the Taxpayers' property was \$1,227,224, of which \$580,000 was land value and \$647,224 was residential improvements. [County Board Record, p. 4; Tr. pp. 8-9].

11. The Taxpayers' property is located in Land Economic Area (LEA) 0207, which is comprised of the Jackson Hole Golf and Tennis Club Estates, Filings 1, 2 and 3. In 2009 and 2010 there were seven homes sold in this LEA. [County Board Record, p. 25; Tr. pp. 12-14].

12. Ms. Johnson detailed the methodology she used to establish the value of Petitioners' property, including a review of available sales, and the location, condition, and characteristics of the property. Based upon the sales that occurred in LEA 0207, she determined a market multiplier of 2.8 was warranted. [County Board Record, pp. 21-26; Ex. 2, 3, 3-1; Tr. pp. 15-21, 51-57].

13. Ms. Johnson testified that the Jackson Hole Golf and Tennis Club Estates, LEA 0207, is comparable to Fairway Estates and Bar B Bar, LEA's 10 and 0221 respectively, which had a market multiplier of 2.45. Therefore, she imputed the lower market multiplier of 2.45 to all of the residential improvements in the Jackson Hole Golf and Tennis Club Estates. [Tr. pp. 21-25, 32-34].

14. Ms. Johnson discussed the different characteristics, such as square footage, condition, quality, age, effective age and other amenities that are entered into the Computer Assisted Mass Appraisal (CAMA) system to determine the value of a specific property. After the Taxpayers filed their Notice of Appeal, the Assessor visited the Taxpayers' property. She reviewed the characteristics of the property and determined the correct data had been entered into the CAMA system. [Tr. pp. 51-59].

15. 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 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, pp. 6, 32].

16. 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 the Taxpayers until November 19, 2012, to file exceptions to the hearing officer's recommendations and proposed order. [County Board Record II, pp. 6, 9-16, 32-55].

17. The Taxpayers submitted exceptions to the hearing officer's recommendations and proposed order, but they did not attend the County Board hearing on November 20, 2012. The

Record¹, but the transcript of that proceeding does indicate that the County Board members did consider the letter of exceptions. [County Board Record II, pp. 19, 58-63].

18. The County Board adopted the recommendations and proposed order of the hearing officer on November 20, 2012, which affirmed the Assessor's fair market value of the Taxpayers' property at \$1,227,224. [County Board Record II, pp. 23-28, 66-74].

APPLICABLE LAW AND DISCUSSION OF ISSUES

19. 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

20. 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."

21. 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."

22. 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 Board of Equalization]* 735 P.2d [107] at 115.

¹A copy of the Taxpayers' Letter of Exceptions dated November 15, 2012, was attached to their Notice of Appeal as Exhibit A.

Holly Sugar Corp. v. State Board of Equalization, 839 P.2d 959, 964 (Wyo. 1992), quoted in *Basin Electric Power Coop., Inc. v. Dep't of Revenue*, 970 P.2d 841, 857 (Wyo. 1998).

23. 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. Dep't of Revenue*, 970 P.2d 841, 852 (Wyo. 1998).

24. 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)*.

25. 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).

26. “Timely filing of a request for administrative review of an agency decision is mandatory and jurisdictional.” *Chevron U.S.A. v. Department of Revenue*, 2007 WY 62, ¶ 7, 155 P.3d 1041, 1043 (Wyo. 2007); see *Antelope Valley Improvement v. State Bd. of Equalization*, 992 P.2d 563, 567 (Wyo. 1999); *Fullmer v. Wyoming Employment Sec. Com'n*, 858 P.2d 1122, 1124 (Wyo. 1993).

27. The failure to file an appeal with an Assessor within the statutory 30 day time frame is a jurisdictional defect which the State Board must independently consider even if not raised by any party. *Wyo. Stat. Ann. § 39-13-109(b)(i)*, *supra* ¶ 25; *Hall v. Park County*, 2010 WY 124, ¶ 3, 238 P.3d 580, 581 (Wyo. 2010); *Ragsdale v. Hartford Underwriters Ins. Co.*, 2007 WY 163, ¶ 4, 169 P.3d 78, 80 (Wyo. 2007); *Plymale v. Donnelly*, 2006 WY 3, ¶ 4, 125 P.3d 1022, 1023 (Wyo. 2006); *Robbins v. South Cheyenne Water & Sewage Dist.*, 792 P.2d 1380, 1384 (Wyo. 1990).

28. The jurisdictional defect is not be waived where there is a mistake by a party or the tribunal. *Wyo. Stat. Ann. § 39-13-109(b)(i)*, *supra* ¶ 25; *In re Adoption of CF*, 2005 WY 118, ¶ 30, 120 P.3d 992, 1003 (Wyo. 2005); *Miller v. Murdock*, 788 P.2d 614, 616-617 (Wyo. 1990). “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 Development Co. v. Environmental Quality Council*, 966 P.2d 972, 975 (Wyo. 1998); see *Billings v. Wyo. Bd. of Outfitters and Guides*, 2001 WY 81, ¶ 24, 30 P.3d 557, 568-569 (Wyo. 2001).

29. 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).

30. 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)*.

31. 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. 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.

(ii.) The Cost Approach. The cost approach is a method of estimating value by summing the land value, where applicable, with the depreciated value of improvements. In the CAMA system, RCNLD is calculated using Marshall

and Swift cost tables. The cost approach is an accepted supplemental approach and could serve as the primary approach when sales data is unavailable or inadequate (such as special purpose properties). The cost approach relies on the principle of substitution in which an informed buyer will not pay more for a property than its comparable replacement. The approach requires:

(A.) Accurate, current land values in the case of real property;

(B.) Accurate, pertinent physical data regarding the property to which cost data may be applied;

(C.) Current cost data which considers appreciation in the case of real and personal property;

(1.) Costs may be estimated on the basis of typical replacement or reproduction costs.

(2.) Typical replacement or reproduction costs may be estimated by the quantity survey method, the unit-in-place method, the comparative unit method, or the trended original cost method.

(iii.) The Income or Capitalized Earnings Approach. The income or capitalized earnings approach is a method of estimating the value of property by converting anticipated benefits to be derived from the ownership of the property into a value estimate as is reflected or accomplished by yield capitalization methodology. These benefits can be reflected through the net operating income or cash flow of a company. The anticipated future income and/or reversions are discounted to a present worth. Direct capitalization may also be used to convert a single year's income expectancy into an indication of value. This conversion is accomplished by either dividing the income estimate by an appropriate income rate or by multiplying the income estimate by an appropriate income factor in accordance with generally accepted appraisal techniques. Both direct and yield capitalization methodologies are considered to be the income or capitalized earnings approach as discussed in this subsection. For present worth information refer to Section 16 of these rules.

(A.) For the purposes of this subsection, cash flow is the difference between dollars paid and dollars received. Dollars received include all revenues generated from operating assets. Dollars paid include all current expenses and capital expenditures, or annual allowances therefore, required to develop and maintain the income stream. Cash flow must also take into account all legally enforceable restrictions on the property.

(B.) Net operating income or cash flow is discounted to fair value using a capitalization rate developed by the methods described in Section 4(a)(vi)[.]

Rules, Wyoming Department of Revenue, Chapter 9 § 5.

32. 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)*.

33. 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).

34. The Wyoming Supreme Court has recognized the validity of valuations derived from inputs into the CAMA system. *Gray v. Wyoming State Board of Equalization*, 896 P.2d 1347 (Wyo. 1995). 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 derived by its use. *Id.* at 1351.

35. The Wyoming Supreme Court has stated: "Substantial evidence . . . 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." *Mekss v. Wyoming Girls' School*, 813 P.2d 185, 200 (Wyo. 1991) (citations omitted), *quoted in Bush v. State ex rel Wyo. Workers' Comp. Div.*, 2005 WY 120, ¶ 5, 120 P.3d 176, 179 (Wyo. 2005). The Wyoming 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). *See Laramie County Sheriff's Department v. Kenneth Cook*, 2012 WY 47, ¶¶ 11-12, 272 P.3d 966, 970 (Wyo. 2012).

36. 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).

37. 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

38. 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. 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* ¶¶ 15-16, 35.

39. Throughout the proceedings the Taxpayers contended the cost per square foot of their home was not uniform with the square foot cost of their neighbor's homes. The cost per square foot of the Taxpayers' home built in 1998 was \$272.29 based upon the 2011 fair market value established by the Assessor, while the cost per square foot of their neighbors' homes ranged from a low of \$157.28 for a home built in 1980, to a high of \$320.86 for a home built in 2005. While the Taxpayers' argument appears to have some validity on its face, the Taxpayers have failed to take into account all of the factors that go into valuing a home. There is a difference of 25 years in the age of these homes. Depreciation must be considered when using the cost and sales approaches for valuation. The Assessor explained that in addition to the size or square footage of the home, she must also consider other characteristics such as quality, condition, age, effective age and other amenities to value a home. Comparing the cost per square foot of one home to another home, without considering all of the other characteristics of the homes is like comparing apples to oranges. *Supra* ¶¶ 1, 5-10, 12, 14, 20-24, 29-32.

40. The Assessor conducted an inspection of the Taxpayers' home after Taxpayers appealed the 2011 valuation of their home to the County Board. After inspecting the home, the Assessor concluded the data and characteristics inputted into the CAMA system to value the home were accurate. 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 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). The Taxpayers were unable to demonstrate the Assessor incorrectly or inappropriately applied the valuation methodology established by statute and the Department. They merely compared the differences in the valuation per square foot of their home to their neighbors' homes. The Taxpayers did not meet the burden required to overcome the Assessor's valuation. *Supra* ¶¶ 1-5, 9-14, 20-24, 29-34.

41. In their Notice of Appeal to the State Board, the Taxpayers stated: "This appeal also applies to the 2012 valuation . . . of his residence." The appeal of the Assessor's annual valuation to the County Board requires the timely filing of a notice of appeal with the Assessor. A review of the record establishes that the Taxpayers did not file a notice of appeal regarding the 2012 valuation of their property as required by Wyoming Statutes section 39-13-103(a)(v). Because the Taxpayers did not appeal the 2012 valuation of their property to the County Board, the State Board does not have jurisdiction to consider the the Assessor's 2012 property valuation. *Supra* ¶¶ 3-4, 7-8, 25-28.

42. 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 the meeting, except for the Taxpayers. While the State Board does not find that this violates the Taxpayers' right to due process under the circumstances, it is would have been a better practice to give the Taxpayers notice of this meeting. *Supra* ¶¶ 15-16, 36-37.

43. The County Board decision to adopt the hearing officer's recommendations and proposed order affirming the Teton County Assessor's 2011 valuation of the Taxpayers' property in the amount of \$1,227,224, was not arbitrary, capricious, in excess of statutory jurisdiction, authority or limitations or lacking statutory right and was supported by substantial evidence. *Supra* ¶¶ 2, 18, 35-37.

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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**.

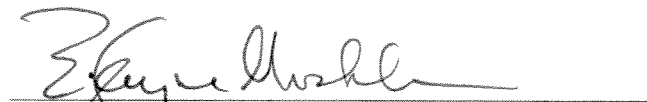
Pursuant to Wyo. Stat. Ann. § 16-3-114 and Rule 12, Wyoming Rules of Appellate Procedure, any person aggrieved or adversely affected in fact by this decision may seek judicial review in the appropriate district court by filing a petition for review within 30 days of the date of this decision.

Dated this 11th day of December, 2014.

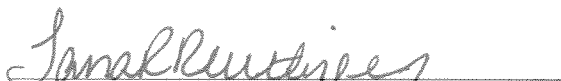
STATE BOARD OF EQUALIZATION


Steven D. Olmstead, Chairman


Paul Thomas Glause, Vice-Chairman


E. Jayne Mockler, Board Member

ATTEST:


Jana R. Reutlinger, Executive Assistant

CERTIFICATE OF SERVICE


I hereby certify that on the 11th day of December, 2014, 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:

Donald M. & Marian Y. Jones
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Jackson, WY 83001

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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