

**BEFORE THE STATE BOARD OF EQUALIZATION**  
**FOR THE STATE OF WYOMING**

IN THE MATTER OF THE APPEAL OF )  
**BRIAN L. LIKEWISE** FROM A DECISION )  
OF THE CAMPBELL COUNTY ) Docket No. **2013-38**  
BOARD OF EQUALIZATION - 2013 )  
PROPERTY VALUATION )

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**DECISION AND ORDER**

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**APPEARANCES**

Brian L. Likewise (Taxpayer or Petitioner), was self-represented.

Carol Seeger, Deputy Campbell County and Prosecuting Attorney, appeared on behalf of Campbell County Assessor (Assessor or Respondent).

**DIGEST**

This is an appeal from a decision of the Campbell County Board of Equalization (County Board) affirming the Assessor's valuation of Taxpayer's property for 2013 tax purposes. Taxpayer's Notice of Appeal was filed with the State Board of Equalization (State Board) effective August 9, 2013. Both Taxpayer and Assessor filed briefs, as permitted by the October 9, 2013, State Board Briefing Order. Oral arguments were held on February 18, 2014.

The State Board, comprised of Steven D. Olmstead, Chairman, Paul Thomas Glause, Vice-Chairman, and E. Jayne Mockler, Board Member, considered the parties' filings, the County Board hearing record, the decision of the County Board, and the parties' oral arguments.

We evaluate Taxpayer's appeal of the County Board decision against our standard of review, which is whether the decision was arbitrary, capricious, unsupported by substantial evidence, and/or contrary to law. *Rules, Wyoming State Board of Equalization, Chapter 3 § 9.*

We affirm the “Findings of Fact, Conclusions of Law, Order” of the County Board affirming the Assessor’s 2013 valuation of Taxpayer’s property.

## **ISSUES**

Taxpayer raised five contentions in his Notice of Appeal and Opening Brief. The State Board rephrases Taxpayer’s contentions as following:

1. The Hearing Officer erred by denying Taxpayer’s motion to recuse a County Board member.
2. The Hearing Officer erred by not allowing Taxpayer a closing argument.
3. The Assessor’s witness committed perjury and should be punished.
4. The County Board’s decision failed to consider all the facts, and the County Board fabricated or misrepresented the facts in its decision.
5. The Assessor failed to support his position with credible evidence.

*[Taxpayer’s Notice of Appeal and Opening Brief, pp. 1, 2, 7-8].*

The Assessor stated the issue as:

Was the decision of the Campbell County Board of Equalization affirming the Campbell County Assessor’s 2013 assessment of Petitioner’s property which was derived utilizing the CAMA system supported by substantial evidence and neither arbitrary, capricious, and abuse of discretion or not in accordance with law and done in observance of procedure required by law.

*[Response Assessor Brief of Respondent Assessor, p. 3].*

## **PROCEEDINGS BEFORE THE COUNTY BOARD**

The County Board conducted a hearing on June 27, 2013, at which Taxpayer and his wife, and the Assessor’s Chief Appraiser each testified and presented exhibits. The County Board entered its decision on July 16, 2013, affirming the Assessor’s 2013 fair market value for Taxpayer’s property and denying any adjustment of the assessed valuation. [County Board Record, pp. 2-3, 82-89].

## **JURISDICTION**

The State Board is required to “hear appeals from county boards of equalization.” *Wyo. Stat. Ann. § 39-11-102.1(c)*. Taxpayer filed a timely appeal of the July 16, 2013, County Board decision with the State Board effective August 9, 2013. *Rules, Wyoming State Board of Equalization, Chapter 3 § 2*.

## **STANDARD OF REVIEW**

When the State Board hears appeals from a county board, it acts as an intermediate level of appellate review. *Laramie County Board of Equalization v. Wyoming State Board of Equalization*, 915 P.2d 1184, 1188 (Wyo. 1996); *Union Pacific Railroad Company v. Wyoming State Board of Equalization*, 802 P.2d 856, 859 (Wyo. 1990). In its appellate capacity, the State Board treats 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 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), *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. Brian Likewise owns real property and improvements described as Lot 159, Sierra Glen Addition, located at 1620 Cimarron Drive, Gillette, Campbell County, Wyoming 82716. [County Board Record, p. 2, 47-49, 55-56, Audio Recording of Hearing].
2. The Assessor mailed the Campbell County “2013 Notice of Assessment” to Taxpayer on April 19, 2013. [County Board Record, p. 55].
3. On May 10, 2013, Taxpayer signed and filed a “Statement to Contest Property Tax Assessment,” appealing his 2013 property tax assessment. The document was date stamped May 21, 2013, as received by the County Clerk.<sup>1</sup> Taxpayer stated his property assessment should be \$125,000 to \$126,000. The County Board set Taxpayer’s protest hearing for June 27, 2013. [County Board Record, p. 1].

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<sup>1</sup> The County Board’s “Findings of Fact and Conclusions of Law Order” stated the filing date of Taxpayer’s Statement to Contest Property Tax Assessment was on or about May 21, 2013 (County Board Record pg. 83). This Board, however, notes Taxpayer’s statement was signed by Taxpayer on May 10, 2013, (County Board Record pg. 1), and thus timely filed.

4. Both Taxpayer and Assessor appeared at the County Board hearing. Taxpayer and his wife, Sherilyn Likewise, along with the Assessor's Chief Appraiser, Angela Williams, provided sworn testimony and presented exhibits. There were no other witnesses. [County Board Record, pp. 66, 82, Audio Recording of Hearing].

5. Taxpayer's property is a single family ranch style residential home, consisting of three bedrooms and one bath with 960 square feet living area, along with an attached car port. It has a 672 square foot detached garage and a shed. Taxpayer's property is located in Neighborhood 1720, which included homes in the Sierra Glen and the Killarney subdivisions in the city of Gillette. Neighborhood 1720 is located within a LEA (land economic area), which is a grouping of Sierra Glen, Killarney, McCann Heights, and Rolling Hills subdivisions<sup>2</sup>, for the purposes of establishing land value as part of the total appraisal value. The property lot size is 7,700 square feet. [County Board Record, pp. 7-8, 15, 47-49 55-56, 61-63, Audio Recording of Hearing].

6. Mr. Likewise asserted his property was overvalued and should have been compared to similar properties located throughout Gillette to reach the fair market value. He disagreed with the neighborhood designation made by the Assessor, arguing that it was the wrong mix of homes. He argued that his home should have been compared to homes similar in age, construction and lot size to his home in all of Gillette. In addition to the testimony of the Taxpayer and his wife, Taxpayer presented Exhibits 1-5, 7-19, 23-33, which were accepted into the County Board's record. [County Board Record, pp. 4-46, Audio Recording of Hearing].

7. Taxpayer questioned the difference in values of the properties presented in his exhibits and the value the Assessor determined for his property. Taxpayer questioned the differences in land values throughout his neighbor. Taxpayer believed his land and improvements were unfairly overvalued by the Assessor and should be valued at the average value he determined from properties throughout Gillette listed in his Exhibit 14. [County Board Record, pp. 16, 24-43, Audio Recording of Hearing].

8. Taxpayer described certain physical conditions (front step concrete and floor joists) of his home and discussed specific construction flaws, which he believed should have reduced the quality of the home from a "fair plus" to a "fair" condition, according to what

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<sup>2</sup> Taxpayer's Opening Brief (p. 3) references Neighborhood 1720 as consisting of Sierra Glen, Killarney, and Rosemary subdivisions. Assessor's Response Brief (pg. 3) refers to Rosemary subdivision as part of the Neighborhood. There was no evidence in the County Board record indicating Taxpayer's Neighborhood 1720 or LEA with a "Rosemary" subdivision.

he believed were the IAAO (International Association of Assessing Officers) guidelines. [County Board Record, pp. 44-46, Audio Recording of Hearing].

9. Taxpayer opined his property was no better than other properties in Campbell County and should have been valued as the average of the properties provided in Exhibit 14. Taxpayer argued the cost per square foot difference among the buildings on the properties presented in his exhibits verified the Assessor was not assessing properly and overvalued the fair market value of his property. Taxpayer presented maps and discussed the wind factor, snow loads and earthquake issues that would effect the value of his improvements. Taxpayer argued the “Replacement Cost New” (RCN) method of appraisal was improper and not a fair market value. Taxpayer argued his assessment did not provide sufficient depreciation of his home, as compared to the three other properties listed in his exhibits. Taxpayer acknowledged the recently constructed detached garage on his property, but thought it increased the overall property value too much and compared it to a neighbor’s garage. Taxpayer opined the value the Assessor placed on the two year old garage was over market value, due to the high square foot cost as broken out from the Assessor’s valuation. [County Board Record, pp. 4-6, 9-21, 24-43, Audio Recording of Hearing].

10. Taxpayer presented a calculation that he believed was the correct method to determine the value of his property. Taxpayer decried the calculations provided to him by the Assessor as misleading and not the correct value. [County Board Record, pp.7-8, 15, 17, Audio Recording of Hearing].

11. Mr. Likewise additionally argued the size and value of his lot should be reduced due to an easement located at the back side of his property upon which a wall was built, thus blocking his full access to all his lot. He argued the drainage easement was for a public purpose, citing Wyoming Statutes section 39-11-105(v)(E), and should, therefore, be exempt from taxation. Mr. Likewise, however, acknowledged he purchased his property several years ago knowing the drainage easement existed. [County Board Record, Audio Recording of Hearing].

12. At the beginning of the County Board hearing, Taxpayer requested one of the County Board members recuse himself because the board member allegedly had not paid the past year’s property tax. The Hearing Officer denied Taxpayer’s request. Taxpayer also wanted to addresses an issue about his 2012 hearing before the County Board, which the Hearing Officer also denied. [County Board Record, Audio Recording of Hearing].

13. Angela Williams, the Assessor’s Chief Appraiser testified on behalf of the Assessor. She had eight years experience in the Assessor’s office and was a permanent state certified appraiser. She had over 300 hours of education in the assessment and appraisal field through

IAAO and the Department. She presented Exhibits A through M, which were accepted into evidence. [County Board Record, pp. 47-65, Audio Recording of Hearing].

14. Ms. Williams reviewed the neighborhood and LEA grouping for Taxpayer's residence and explained how the land value was derived. The base value for Taxpayer's land value was \$4.13 per square foot, for a total of \$31,763. [County Board Record, pp. 47-56, Audio Recording of Hearing].

15. The Assessor used the state's Computer Assisted Mass Appraisal (CAMA) system to determine a cost value of building structures on Taxpayer's parcel of property as a step in arriving at a fair market value. Built into the CAMA system were the Marshall and Swift cost tables, from which a cost value or replacement cost new (RCN) was determined for the structures on Taxpayer's property. The CAMA was used for valuation on all residential properties in Campbell County, as directed by the Department. [County Board Record, pp. 47, 55, 61-63, Audio Recording of Hearing].

16. There were several factors considered by the Assessor to determine the RCN of a building structure, including measurements of the structure or size, materials used in construction, structure characteristics, quality of construction and condition. To determine Replacement Cost New Less Depreciation (RCNLD), the age and condition of the structure were taken into account, as well as flooring and energy factors. Ms. Williams stated the quality of Taxpayer's residence was rated as "fair plus," which is between a fair and an average quality of residence. The condition or maintenance was average. Taxpayer's home was "stick" built in 1970. The home was 42 years old and received a 66% depreciation. Ms. Williams reviewed the depreciation factor applied to Taxpayer's improvements, as well as the additional 5% negative adjustment applied as economic obsolescence to overcome the high value the new garage, built in 2011. She explained the new garage increased the overall value of the property too much. [County Board Record, pp. 47, 49, 55, 61-65, Audio Recording of Hearing].

17. Ms. Williams detailed the process using the 2012 sales data from the neighborhood, as well as the LEA, and explained how a multiplier factor was derived and used to adjust the RCNLD plus the land value to reach a fair market value of Taxpayer's property. This was the same process used on all residential property in Campbell county. There were six valid sales used in taxpayer's neighborhood and LEA. [County Board Record, pp. 56-60, 65, Audio Recording of Hearing].

18. Ms. Williams explained how she followed the Department's rules and requirements when setting the fair market values in Campbell county and complied with the Department's ratio statistical requirements. [County Board Record, pp. 57-60, 65, Audio Recording of Hearing].



19. The County Board issued its “Final Decision” concerning Taxpayer’s 2013 property assessment appeal on July 16, 2013. The County Board denied Taxpayer’s appeal and affirmed the Assessor’s 2013 tax assessment valuation. [County Board Record, pp. 82-89].

## **APPLICABLE LAW AND DISCUSSION OF ISSUES**

### **Applicable Law**

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

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

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

23. 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. The Wyoming Statutes section 39-13-109(b)(i) states in relevant part:

(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.

*Wyo. Stat. Ann. § 39-13-109(b)(i)*.

24. Wyoming Statutes section 39-13-102, in relevant part, sets 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:

(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);

(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)(iv), (d).*

25. 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 Elec. Power Co-op., Inc. v. Dep't of Revenue, State of Wyo.*, 970 P.2d 841, 852 (Wyo. 1998).

26. Wyoming Statutes set the duties, in part, for the State Board in the hearing process:

(c) The state board of equalization shall perform the duties specified in article 15, section 10 of the Wyoming constitution and shall hear appeals from the county boards of equalization and review final decisions of the department upon the application of any interested person adversely affected, including boards of county commissioners for the purposes of this subsection, under the contested case procedures of the Wyoming Administrative Procedure Act.

*Wyo. Stat. Ann. § 39-11-102.1(c).*

27. The Legislature has required all property in Wyoming to be valued annually at fair market value. *Wyo. Stat. Ann. § 39-13-103(b)(ii)*. The statutory valuation date is January 1

of each year; all taxable property must be valued and assessed for taxation in the name of the owner of the property on that date. *Wyo. Stat. Ann. § 39-13-103(b)(i)(A)*.

28. 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 Elec. Power Co-op., Inc. v. Dep’t of Revenue, State of Wyo.*, 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).

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

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

31. 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.’” The Court went on to say “[f]indings of fact are supported by substantial evidence if, from the evidence preserved in the record, we can discern a rational premise for those findings.” *Bush v. State ex rel. Wyo. Workers’ Comp. Div.*, 2005 WY 120, ¶ 5, 120 P.3d 176, 179 (Wyo. 2005) (citations omitted). *See also Stevens v. State ex rel. Wyo. Workers’ Comp. Div.*, 2014 WY 153, ¶ 31, \_\_\_ P.3d \_\_\_ 2014 WL 6765826 (Wyo. Dec. 2, 2014). The Court expressed “[t]he arbitrary and capricious standard remains a ‘safety net’ to catch agency action which prejudices a party’s substantial rights or which may be contrary to the other W.A.P.A. review standards yet is not easily categorized or fit to any one particular standard.” *Dale v. S & S Builders, LLC.*, 2008 WY 84, ¶ 23, 188 P.3d 554, 561 (Wyo. 2008). *See Laramie County Sheriff’s Department v. Kenneth Cook*, 2012 WY 47, ¶¶ 11-12, 272 P.3d 966, 970 (Wyo. 2012).

32. 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).*

33. Each county assessor annually determines the fair market value of residential real property within their county. *Wyo. Stat. Ann. § 18-3-204(a)(i), (ii) and (vi); Wyo. Stat. Ann. § 39-13-103(b)(i)(A) and (ii).* In so doing, the assessor must “[f]aithfully and diligently follow and apply the orders, procedures and formulae of the department of revenue or orders of the state board of equalization for the appraisal and assessment of all taxable property.” *Wyo. Stat. Ann. § 18-3-204(a)(ix); see Wyo. Stat. Ann. § 39-13-103(b)(ii).*

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

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

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

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

Section 5. Appraisal Methods.

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

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

38. 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.)*

39. Neighborhood is defined as:

1) The environment of a subject property that has a direct and immediate effect on value. 2) A geographic area (in which there are typically fewer than several thousand properties) defined for some useful purpose, such as to ensure for later multiple regression that the properties are homogeneous and share important locational characteristics.

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

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

41. 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).

42. “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).

43. The Supreme Court has stated on many occasions it will not consider issues that fail to provide cogent argument and pertinent legal authority. In *Rehnberg v. Hirshberg*, 2003 WY 21, ¶ 19, 64 P. 3d 115, 120 (Wyo. 2003), the court said: “Rehnberg provided no cogent argument or citation to authority. . . . Consequently, we will not pursue a detailed analysis of the issue.” The Court also stated it “has summarily affirmed cases or issues in cases that are not presented with cogent argument or pertinent authority. *State ex rel. Reese v. State Bd. of Outfitters*, 931 P.2d 958, 959 (Wyo. 1997) (citations omitted). See *Board of County Comm’rs of Teton County v. Crow*, 2003 WY 40, ¶ 36, 65 P.3d 720, 732 (Wyo. 2003).

44. In interpreting a statute, the 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 Co. v. Wyo. Game and Fish Comm’n.*, 845 P.2d 1040, 1045 (Wyo. 1993).

45. 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. Comm’n.*, 715 P.2d 223, 225 (Wyo. 1986) (citations omitted).

46. The Wyoming Supreme Court expressed:

[A]dministrative 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.

*Disciplinary Matter of Billings*, 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).

47. 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.

*Exxon Mobil v. Wyoming Dep't. of Revenue*, 2011 WY 161, ¶ 24, 266 P.3d 944, 951 (Wyo. 2011) (citations omitted), quoting *Amoco Prod. Co. v. Wyo. State Bd. of Equalization*, 12 P.3d 668, 673 (Wyo. 2000).

48. The Wyoming Supreme Court stated:

“The issue of subject matter jurisdiction is so fundamental that it cannot be waived, can be raised on the 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 the 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) (citations omitted); see *Bruns v. TW Services, Inc.*, 2001 WY 127, ¶ 16, 36 P.3d 608, 613-614 (Wyo. 2001) .

49. The Wyoming Constitution, article 5, section 10, provides:

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

50. Wyoming Statutes defines perjury as a felony. The Wyoming criminal statute further states:

(a) A person commits perjury if, while under a lawfully administered oath or affirmation, he knowingly testifies falsely or makes a false affidavit, certificate, declaration, deposition or



statement, in a judicial, legislative or administrative proceeding in which an oath or affirmation may be required by law, touching a matter material to a point in question.

*Wyo. Stat. Ann. § 6-5-301(a).*

51. Wyoming Statutes section 16-3-108 provides in part:

(a) In contested cases irrelevant, immaterial or unduly repetitious evidence shall be excluded and no sanction shall be imposed or order issued except upon consideration of the whole record or such portion thereof as may be cited by any party and unless supported by the type of evidence commonly relied upon by reasonably prudent men in the conduct of their serious affairs.

*Wyo. Stat. Ann. § 16-3-108(a).*

52. Wyoming Statutes section 39-11-105, pertaining to exemptions, provides in part:

(a) The following are exempt from property taxation:

(v) Property of Wyoming cities and towns owned and used primarily for a governmental purpose including:

(B) Property used to furnish sewer and water services,

(E) Personal property used exclusively for the care, preservation and administration of city or town property.

*Wyo. Stat. Ann. § 39-11-105(a)(v)(B), (E).*

## **Discussion**

53. Taxpayer filed a timely appeal of the Assessor's 2013 assessment of his property. Taxpayer had a protest hearing before the County Board. The decision and order made by the County Board affirmed the Assessor's valuation. Taxpayer timely appealed the County Board's decision to the State Board and the State Board has jurisdiction to hear and decide this matter. *Supra* ¶¶ 2-3, 19.

54. Taxpayer's initial contention in this matter was the County Board did not grant his motion of recusal of a County Board member and did not allow the discussion of his 2012 tax

year's hearing procedures. The Hearing Officer ruled against the motion to recuse, and ruled against Taxpayer's request to bring up 2012 hearing issues as irrelevant. Taxpayer failed to adequately address these contentions with any cogent argument and without any reference to pertinent legal authority as to how he was prejudiced by the Hearing Officer's ruling. Taxpayer failed to state why the County Board member's tax payments were relevant to his appeal. It was, therefore, proper for the Hearing Officer to exclude irrelevant material. Taxpayer also failed to adequately address the relevance of the 2012 hearing issue for this Board. The State Board does not have jurisdiction to hear any matter that was not timely and properly brought before it. If Taxpayer believed he did not receive a fair hearing in 2012, he should have made an appeal to the State Board in a timely manner. *Supra* ¶¶ 12, 23, 43-48, 51.

55. Taxpayer also complained that he was not allowed to make a "Closing Argument" during the County Board hearing. Mr. Likewise failed to make any cogent argument with pertinent legal authority on how he was prejudiced by not making a closing argument. Mr. Likewise presented his evidence, which was admitted and thoroughly discussed and argued, without limitation during the County Board hearing by the Taxpayer, by his wife, along with the Assessor's representative, and the County Board members before the Hearing Officer closed taking of evidence. Taxpayer did not object to not having the opportunity for a closing argument with the County Board's Hearing Officer at the close of the hearing. The Wyoming Supreme Court has stated that a parties "failure to assert [a] right to utilize that opportunity by objecting at the close of the hearing amounted to both a waiver and invited error." *Pacific Power and Light v. Heermann*, 872 P.2d 1171, 1174 (Wyo. 1994) (citations omitted). The State Board finds no merit in either the Taxpayer's motions contention as stated above, or the contention the County Board's hearing and decision order was flawed because he was not allowed to give a closing argument. *Supra* ¶¶ 4-19, 23-24, 43.

56. Taxpayer contends the decision of the County Board was flawed because the Assessor's representative committed felony perjury during the County Board's hearing. He demands the State Board take action against Ms. Williams based upon his allegations. First, the State Board is without prosecutorial authority to criminally charge or prosecute Ms. Williams with perjury. No direct authority for such action was provided to the State Board under the Wyoming Constitution nor under its enabling statute, *Wyo. Stat. Ann. § 39-11-102.1*. The State Board will not enlarge the language in any statute to undertake the prosecution of an alleged criminal act. Jurisdiction in a felony criminal action is with the district court. Such action would properly be brought by the County and Prosecuting Attorney's Office, or perhaps the Wyoming Attorney General's Office. Secondly, after careful review of the County Board's record, the State Board was unable to discern any attempt by Ms. Williams to intentionally mislead or deceive the County Board on any material evidence presented. Therefore, the State Board finds no merit in Taxpayer's accusations of perjury committed by Ms. Williams. *Supra* ¶¶ 12-18, 26, 41-42, 45-50.

57. Taxpayer contends the County Board did not consider all of the facts, or misrepresented the facts in its decision and order affirming the Assessor's valuation of his property. Taxpayer goes to great length to point out the facts presented and refutes the facts the Assessor presented in his briefs filed with the State Board. He made similar arguments during his presentation of evidence and cross examination of the Assessor's witness during the County Board hearing. *Supra* ¶¶ 6-10, 13-18.

58. Taxpayer presented a well detailed analysis of what he believed the proper calculations of value should be to the County Board regarding his property. Taxpayer has a fairly good understanding of the property valuation and taxing process in Wyoming and presented a fair number of exhibits to support his position. Taxpayer, however, ignores the that Assessors must follow the statutes and Department rules and regulations when arriving at a fair market value for property each year. *Supra* ¶¶ 5-10, 25, 27-30, 32-39.

59. Taxpayer contends the Assessor's use of "replacement cost new" was an inappropriate method of determining fair market value for property. The Assessor explained the CAMA system and how property values were determined using the Marshall and Swift tables incorporated into the CAMA system. The Assessor explained the data required to value a stick built home. The Assessor explained how she followed Wyoming's statutes and the Department's rules in arriving at a value for Taxpayer's property, as well as the properties listed in each exhibit offered by Taxpayer as comparable. The Assessor explained the difference between neighborhoods and LEA's in the admitted exhibits and explained why the land values were different. Additionally, the Assessor was able to systemically explain the specific appraisal differences in each of the properties in Taxpayer's exhibits to the appraisal of Taxpayer's property. *Supra* ¶¶ 5-10, 14-18, 27-30, 32-33, 36-39.

60. Taxpayer did not provide any credible evidence that the Assessor did not follow the state's statutes or Department's rules, but simply argued the Assessor was wrong. Mere difference of opinion is not sufficient evidence to overcome a presumption of correct assessment practices by the Assessor. *Supra* ¶¶ 4-11, 28-30.

61. Taxpayer did not agree with the Assessor's appraisal methods nor the use of the CAMA system. However, Taxpayer offered no other methods, systems, or evidence which would show the Assessor was incorrect, nor made any cogent argument or referral to any pertinent authority that he was correct. Taxpayer did not understand that a market adjustment was made to his property due to valid open market sales of properties similar to his. His residence was valued like similar "stick built homes" in his neighborhood. Taxpayer simply argued the methods used by the Assessor were not correct and offered his version of how the calculations should be made regardless of the Department's Rules and procedures. *Supra* ¶¶ 6-10, 14-18, 30, 33-37, 43.

62. Taxpayer requested his property land area or the value be reduced due to a drainage easement on his property. Taxpayer claimed the easement was the personal property of the city and should be exempt. He believed his property should not be burdened with the tax on the area that the easement displaced. *Supra* ¶ 11. However, Taxpayer did not present a cogent argument or provide proper or pertinent legal authority or evidence to the County Board or the State Board to support his position that he does not own the area of land upon which the easement covers or that his land value covered by the easement should be exempt from taxation. *Supra* ¶¶ 11, 40-41, 43, 52.

63. Chief Appraiser Williams was well trained and a seasoned property appraiser. She followed the statutes and Department Rules, as required, in valuing Taxpayer's property. *Supra* ¶¶ 13-18. The valuation the Assessor derived using the CAMA system, and her decision regarding land value, are presumed valid, accurate, and correct. *Supra* ¶¶ 29-30. In this case, Taxpayer failed to present sufficient credible evidence to overcome the presumption of validity in favor of the Assessor's valuation determination for both his structures and land. *Supra* ¶¶ 31-32. The CAMA system was a rational method, equally applied to all property, and achieved essential fairness. *Supra* ¶¶ 30, 35-37. The decision of the County Board affirming the Assessor's valuation is supported by substantial evidence. *Supra* ¶ 31. We further conclude, based on our review of the record, the County Board decision was neither unlawful, arbitrary, nor capricious.

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**ORDER**


**IT IS THEREFORE HEREBY ORDERED** the Campbell County Board of Equalization's Findings of Fact, Conclusions of Law, Order dated July 16, 2013, denying Taxpayer's appeal and affirming the Assessor's 2013 valuation of Taxpayer's property is affirmed.

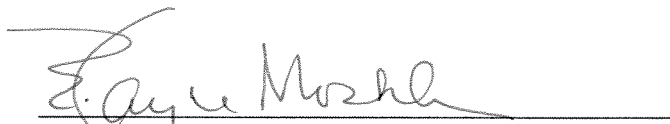
**Pursuant to Wyo. Stat. Ann. §16-3-114 and Rule 12, Wyoming Rules of Appellate Procedure, any person aggrieved or adversely affected in fact by this decision may seek judicial review in the appropriate district court by filing a petition for review within 30 days of the date of this decision.**

DATED this 23<sup>rd</sup> 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 23<sup>rd</sup> 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:

Brian Likewise  
1620 Cimarron Drive  
Gillette, WY 82716

Troy Clements  
Campbell County Assessor  
P. O. Box 877  
Gillette, WY 82717

Carol Seeger  
Deputy County Attorney  
Campbell County Attorney's Office  
500 S. Gillette Avenue, Suite B200  
Gillette, WY 82716

  
\_\_\_\_\_  
Jana R. Reutlinger  
Executive Assistant  
State Board of Equalization  
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cc: SBOE  
Dan Noble, Director, Department of Revenue  
Brenda Arnold, Property Tax Division, Department of Revenue  
Commission/Treasurer - Campbell County  
CCH  
ABA State and Local Tax Reporter  
Lexis-Nexis  
State Library  
File